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DEPARTMENT REPORTS

of the

STATE OF OHIO

Containing the

DECISIONS---OPINIONS---RULINGS

OF THE SUPREME COURT, PUBLIC UTILITIES COMMISSION, ATTORNEY GENERAL, INDUSTRIAL COMMISSION, STATE BANKING DEPARTMENT, TAX COMMISSION, BUREAU OF INSPECTION AND SUPERVISION OF PUBLIC OFFICES, INSURANCE DEPARTMENT, STATE HIGHWAY DEPARTMENT, ETC.

and

SUBJECTS OF LEGISLATION, WHEN THEY SHALL PROVE
OF INTEREST TO OUR SUBSCRIBERS

VOLUME XVI

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ATTORNEY GENERAL

The Expenses of the Chief Architect or of the Superintendent of Schools Made in Attending Meetings of Conventions, Educational or Otherwise, Prior to the Amendment of Section 7704, G. C., Could Not Legally be Paid from the Funds of the School District, but Since Amendment Effective September 7, 1921, Under the Conditions Imposed Such Expenses May be Paid from the Service Fund of a City School District.—Expenses Paid for Entertaining the National Educational Association at its Meeting in the City of Cleveland is an Unauthorized Use of School Funds and Illegal.—Placing Cash in the Hands of an Officer or Employee of a City Board of Education Other Than the Treasurer, Out of Which to Pay Claims Against the Board Before or After Such Claims Are Properly Approved, is Unauthorized and Illegal.—A Duty of the Clerk or of the Director of Schools is the Issuing of Warrants for the Payment of Claims Properly Approved by the Board of Education or its Auditor. Such Officials Are Clothed with No Discretion in the Issuance of Warrants to Pay Valid Approved Claims. For a Greater Reason, a Clerk Employed by the Director of Schools May Not Refuse Such a Duty Assigned to Him to Perform.

No. 2918—(Opinion Dated March 9, 1922.)

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio:

Gentlemen—This will acknowledge receipt of your request for the opinion of this department upon the following questions:

In view of the fact that the general policy of the law as construed by numerous opinions of the Attorney General in the past has been to hold against the payment of expenses from public funds for attendance at and in connection with conventions, conferences, etc., except in a few instances in which the law specifically provides for the expenses of delegates, etc., in attendance at certain meetings, we respectfully request your opinion as to the extent of the use of the 'service fund' provided for in amended Section 7704 (109 O. L., 589), in this connection.

Question 1. May the board of education of the city of Cleveland legally reimburse the chief architect for expenses incurred in attendance at the National Educational Associa-

tion when such attendance took place either before or after such amendment became effective?

The board of education of the city of Cleveland passed a resolution for the expenditure of \$1500 in the payment of certain expenses in connection with the National Educational Association convention to be held in the city of Cleveland; said board also approved claims by superintendents for expenses in attending educational conventions.

Question 2. Is such act of the board of education of such city authorized by law, and may said sum be legally expended for the purposes mentioned; and may the expenses of such superintendents in attending educational conventions be legally paid from public funds?

In the department of director of schools in the city of Cleveland there is maintained a so-called 'Petty Cash Account.' The board allowed \$3000 to be placed in this account to be used as a kind of rotary fund. Bills of nearly all descriptions are paid by check or cash from this fund, then the amounts of said bills are presented in a lump sum to the board in the name of H. P. Cole, a chief accountant. H. P. Cole is then issued a warrant for said sum, which warrant is cashed and deposited in petty cash fund, thereby replenishing said fund. The business transacted through this petty cash fund amounts to about \$60,000 per year.

Question 4. Is the above described procedure legal? See Section 7695, G. C.

Question 5. If a claim comes to the clerk approved by the board and OK'd by the director of schools has said clerk any authority to refuse payment of same? Or must every claim approved by the board be paid?"

In a conversation with you concerning this request it is learned that the chief accountant spoken or in your fourth question is not the auditor of the board of education mentioned in Section 7696, G. C.

Section 7704, G. C. (109 O. L., 589), reads:

"On the third Monday of every January or on the Monday preceding the close of school each year, the clerk of the board of education of a city school district shall certify to the board of education of which he is clerk, the number of pupils enrolled in the public schools of that district, whereupon the board of such city school district may by resolution set aside from the contingent fund a sum not to exceed five cents for each child so enrolled, such sum of money to be known as the 'service fund' to be used only in paying the expenses of such members actually incurred in the performance of their duties, or of their official representatives when sent out of the city school district for the purpose of promoting the welfare of the schools under their charge; such payments to be made only on state-

ment of the several members, or their official representatives, furnished at the last meeting held in each month."

In amended Section 7704, G. C., just quoted, in the sentence stating the uses of the service fund appears these new words, to wit, "or their official representatives when sent out of the city school district for the purpose of promoting the welfare of the schools under their charge."

In an opinion of this department found in Opinions of the Attorney General, 1920, Vol. I, p. 706, construing Section 7704, G. C., before amendment, the headnote says: "The service fund, once created, may be used only to pay expenses of the members of the board actually incurred in the performance of their duties."

Before the amendment of Section 7704, G. C., the expenses of the chief architect in attending national educational association meetings could not legally be paid from the service fund. Since amendment, as the official representative of the board, for the purposes and in the manner set out in the statute, his expenses may be paid from that fund. Answering the second part of your second question out of its order, the same statement will apply to the expenses of the superintendent of schools in attending national educational association meetings. There is no statutory provision for the payment of expenses of school officers or employees attending educational conventions other than that found in amended Section 7704, G. C., *supra*, which became effective September 7, 1921.

There appears to be no statute expressly allowing the payment of expenses incurred in attending an educational convention or meeting other than teachers' institutes. The national educational association is, in a general sense, a great teachers' and superintendents' institute, but our statutes apply only to county or city teachers' institutes. The expenses incurred in entertaining the national educational association in Cleveland recently is, no doubt, the matter to which your second question refers.

Sections 7622 et seq., G. C., recite certain uses for which school property may be had and allowed by the board of education. Thereunder the board may entertain educational bodies in its school buildings when such use does not interfere with the work of the schools. In Section 7622-2, G. C., certain users of school property are required to pay for janitor service; thus showing that the use of the school property is not to be wholly without expense, that is, not wholly at the expense of the school district; so also in Section 7622-3, G. C., although in city districts certain exceptions are made

in Sections 7622-5 and 7622-6, G. C. In the absence of an express provision for the payment of the cost of attending the national educational association or other educational conventions, the implication, if there be any such intended, of the sections above cited is that such cost shall not be paid by the school district, and payment of such expenses from the school treasury is unauthorized and illegal.

Section 7694, G. C., provides that a city board of education may elect a director of schools for a term of two years unless earlier removed, and Section 7698, G. C., provides for such removal. Sections 7695 and 7696, G. C., prescribe the duties of the director of schools. As stated, these sections relate only to city school districts, leaving the creating of a director to the discretion of the board of education of such districts. Section 7695, G. C., reads:

"As director of school, he shall execute for the board of education, in the name of the school district, its contracts and obligations, except that bonds issued must be signed by the president of the board, and attested by the clerk. He shall see that all contracts made by or with such board are fully and faithfully performed. Except teachers, assistant teachers, supervisors, principals, superintendents of instruction, clerk of the board of education, such director shall have the appointment subject to the approval and confirmation of the board of all employes and may discharge them; provided that if the board has adopted an annual appropriation resolution as provided by Section 4752-1 of this act, the board may, by general resolution, provide that such appointment shall not be required to be approved or confirmed by the board if provision therefore (therefor) has been made in such annual appropriation resolution. He shall have the care and custody of all property of the school district, real and personal, except moneys, oversee the construction of buildings, in the process of erection, and the repairs thereof, and advertise for bids, and purchase all supplies and equipment authorized by the board."

It will be noticed that the director executes contracts and obligations of the board, except bonds; has the care and custody of all property of the district, personal and real, except moneys, advertises for bids, and purchases all supplies and equipment authorized by the board.

Section 7696, G. C., provides the further duties of the director, among which are the following: He must issue all warrants for the payment of money from the school fund, but no warrant shall be issued for the payment of any claim until it has been approved by the board; "provided that if the board has adopted an annual appropriation resolution as provided by Section 4752-1 of this act, the

board may, by general resolution, provide that such warrant need not be approved by the board but shall be approved by the auditor of the board, if the expenditure for which such warrant is issued is provided for in such annual appropriation resolution." It will be seen that it is thus provided under certain circumstances that the auditor may approve warrants on the school fund of a city district. The auditor cannot approve warrants for claims against school funds that are not such claims as the board itself could approve and pay. A board of education cannot delegate to an officer or employe duties that are not within the statute for such officer or employe to perform.

In *State v. Griffith*, 74 O. S., 80, the opinion at page 93, construing Section 3985, Revised Statutes, which is now Section 4750, G. C., says:

"The statute gives to the board the power to make rules and regulations for the government of itself, its appointees and pupils; that is, rules for their management, control and direction, merely disciplinary regulations. It could not for a moment be assumed that Section 3985 confers upon the board the power to legislate, so as to confer upon itself and its appointees powers and duties which are not found in the acts of the general assembly; * * *."

Except Section 7696, G. C., no school statute mentions such an official of a board of education as auditor, nor are his duties elsewhere mentioned or described. This section is quite meager in stating just what shall be the duty of the auditor, and so far as the statement goes he may approve claims under the conditions laid down in the section. The chief accountant concerning whom you inquire probably may have certain duties that an auditor, under the usual acceptance of such term, may be required to perform, but such accountant is not the auditor, at least your statement does not so consider him. While the auditor could approve certain claims under the conditions stated in the law, unless he and the chief accountant are one and the same the chief accountant cannot do so. Further, the auditor is not authorized to approve a claim that might not be approved by the board of education. Unless the petty cash account is one provided for in the annual resolution in the section above quoted, and unless a further resolution has been passed authorizing the auditor to approve certain claims, all claims against the board of education must be approved by the board before a warrant may be issued for their payment. And even though the board of education has done the acts required by the law here-

inbefore stated, the placing of three thousand dollars, or any other sum, in the hands of any person who is an employe of the board out of which to pay claims that have not been approved by the board or by the auditor of the board is not authorized by law and therefore illegal. In *State v. Griffith*, supra, the court says: "Indeed, we fail to find any authority in the statutes for the clerk of the board of education to receive or disburse any money, whatever, * * * keeping and disbursing funds seems to be exclusively imposed upon the treasurer of the district."

The clerk and treasurer may be one and the same person, but the clerk is not the treasurer; that is, the clerk does not execute the office of treasurer, although both offices are in one individual. When that individual acts as clerk and when he acts as treasurer, he acts under the burdens and restraints imposed by law on the particular office functioning at the time and is governed by the law covered by that office, and the law as to the clerk is still as stated in the above quotation from *State v. Griffith*.

The director, where a city board has created one, issues the warrants for the payment of claims that the board or its auditor has approved, but neither he nor any other officer or employe of the board has any authority to have cash belonging to the board in his possession out of which to pay claims. Let it be predicated that from such a cash account bills are paid which, when presented to the board or its auditor, are refused approval. In such a case does the officer or employe having charge of the cash reimburse the fund, or, in failure of voluntary reimbursement, must a suit be had to collect the same? Or again, should some claim be paid before the board or auditor has approved the same, but does later do so, who is it who really approves the claim, employe or board? Approval after payment is simply ratification of the judgment of the person paying the claim and is not approval in the meaning of the law. The treasurer legally keeps the funds against which the warrants of the board are issued for payment of all valid approved claims, Sections 4763 and 4768, G. C.

Under Sections 7695 and 7696, G. C., the director takes over many of the duties which the clerk had before the creation of such office. The director's duties, except as stated in these sections, may be enlarged or curtailed at the discretion of the board of education, but the board cannot clothe the director with powers not given it by the statutes or included in the duties of said director.

From all the reasons stated it is concluded that a petty cash account in the hands of an employe or officer of a city board of edu-

cation is not authorized by law and payment of claims from such fund is illegal.

The answer to your fifth question requires a review of the duties of the clerk as set out in the statutes. As before stated, where a director is selected by a city board he performs much of the work given to the clerk, yet the clerk is still a necessary official for he is required to sign bonds and conveyances executed by the board and keep a record of the proceedings of the board.

Section 4747, G. C., is a general statute and provides that each city, village and rural board of education shall elect a person, who may or may not be a member of such board, as clerk, whose term of office shall not exceed two years. Section 4751, G. C., provides that the clerk may call special meetings of the board. Section 4752, G. C., provides that the clerk shall call the roll on the adoption of certain resolutions and record the "aye" and "no" votes of the members of the board. It provides for a payroll for teachers, etc., excepting from the operation of the law clerks of township boards of education under an old plan now changed, when townships had subdistrict directors upon whose certificate the clerk issued a voucher for the subdistrict teachers' monthly pay. Section 4752-1, G. C., provides for the preparation and submission of an estimate of the expense of conducting the affairs of the board for the following year. This duty may become, under certain circumstances, one for the clerk to perform. Section 4753, G. C., provides for a pro tempore clerk in case of the absence of the clerk from a meeting. Section 4754 provides that the clerk shall record the proceedings of each meeting of the board in a book provided for that purpose, which record at the next succeeding meeting shall be read and approved, signed by the president, and attested by the clerk. Section 4756, G. C., provides for the sale of property, personal or real, by the board of education and provides that the president and secretary of the board shall execute and deliver deeds necessary to complete the sale and transfer, and Section 4754 provides that conveyances made by the board shall be executed by the president and clerk thereof, while the next section has a similar provision. Section 4760, G. C., provides that process in all suits against the board shall be by summons served upon the clerk or president. Section 4768, G. C., provides how the treasurer shall disburse and receive the funds of the board. Here the clerk's duty is to countersign all orders on the treasurer for money paid out, and the treasurer of the board can receive no money except from the county treasurer and upon the order of the clerk. Section 4769, G. C., is the only

statute that specifically names the liability of the clerk and his sureties in the payment of money, and is, that in allowing the treasurer to receive more money than the amount of said treasurer's bond, the clerk and his surety shall be liable for the loss of the excess thereof. Section 7699, G. C., requires the clerk to give prompt notice to all persons appointed to any position by the board of education.

In *State v. Griffith*, *supra*, the syllabus reads:

"A public officer is personally, and may be criminally, liable for malfeasance in office; but the sureties on his official bond are answerable only within the letter of their contract for the unfaithful performance of his official duties and not for dereliction outside of the limits of his official duties."

So in the discussion as to the duties of the clerk and his liability it is believed that such duties are clerical or ministerial, and until he becomes clerk-treasurer, assuming the duties of the treasurer under Sections 4782 et seq., G. C., his function is to issue his warrant for the payment of claims approved by the board. But in a city district the clerk, under Section 4763, G. C., prior to and since amendment in 109 O. L., 552, does not become the treasurer of the school district or assume such treasurer's duties, as he does in other districts when the board selects a depository for the school fund. And thus it is believed that in any city district the clerk is responsible only for the faithful performance of official duties, one of which is, in the absence of a director of schools, to issue warrants for the payment of claims approved by the board of education. The issuing of warrants for claims that have been approved in a city school district is specifically stated to be the duty of the director of schools where such official has been selected.

If the clerk referred to in your fifth question is a mere employe of the director of schools and as such the director is authorized to dismiss him, such clerk must perform the work required of him or be dismissed. He has no discretion as to the issuance of warrants for the payment of claims. It is also believed that a clerk of the board of education has no discretion in the issuance of warrants for the payment of claims that have been properly approved by the board of education.

Specifically answering your questions, it is the opinion of this department, for the reasons stated, that:

The board of education of a city school district, prior to the amendment of Section 7704, G. C. (109 O. L., 589), could not legally pay the expenses of the chief architect made in attending the na-

tional educational association meetings from the service fund or other fund of the board. Since amendment said expenses may be paid from said service fund. This same statement applies also to that part of your second question relating to the expenses of the superintendent of schools in attending national educational association meetings.

Expenditure of public funds of the school district of the city of Cleveland in entertaining the national educational association is not authorized by the school statutes and therefore illegal.

Where an appropriation resolution has been passed pursuant to Section 4752-1, G. C., together with a resolution authorizing the auditor of the board to approve warrants, when the expenditure has been from a fund provided for in said appropriation resolution, proper claims against the board may be paid from an account such as you call "petty cash fund," but the money of the school district is properly in the custody of the treasurer and cannot be placed in the care and possession of the chief accountant, auditor or other officer or appointee of the board, and such disposition of the funds of the board is unauthorized and illegal.

The clerk of the board of education in a city school district having a director of schools does not issue warrants for claims against the board, and a clerk in the employ of the director has no discretion in issuing warrants for claims approved by the board. In city districts where there is no director, the clerk issues warrants for the payment of claims approved by the board, and such duty is one required by statute for him to perform and he has no right to refuse such performance.

3

Firemen of Cities Protected by a Fund Established Under General Code Sections 4600 et seq. or General Code Sections 4647-1 et seq., are Exempted from the Benefits of State Industrial Insurance, While Firemen of Villages are Entitled to the Protection Afforded by Funds Created Under the Above Mentioned Sections and the Protection of the State Industrial Insurance.

No. 2930—(Opinion Dated March 15, 1922).

Department of Industrial Relations, Industrial Commission of Ohio,
Columbus, Ohio.

Gentlemen: Your letter of recent date received in which you request the opinion of this department on the action taken by the

Industrial Commission of Ohio on January 25, 1922, which action is as follows:

"In the matter raised by the question of Joseph T. Tracy, Auditor of State, as to the application of the latter part of Sec. 1465-61 G. C. providing that nothing in this act shall apply to police or firemen in cities' when considered in connection with the first paragraph of said section and the law enacted by the last legislature, providing for local taxation for and payment to members of fire departments in all Ohio municipalities, the Commission, after noting the language above referred to, and in order to clarify the law as hereafter to be administered by the Industrial Commission of Ohio in so far as firemen in cities and villages are concerned, directs that the matter be referred to the Attorney General for an interpretation and opinion as to whether or not as this section of the law now stands, the Commission would be authorized or required to make any award for compensation to any firemen, either in cities or villages of Ohio, since the enactment of such new Section 4647 as found in O. L. 109, page 90."

General Code, Section 1468-61, is in part as follows:

"Sec. 1465-61. The terms 'employee,' 'workman' and 'operative' as used in this act, shall be construed to mean:

1. Every person in the service of the state, or of any county, city, township incorporated village or school district therein, including regular members of lawfully constituted police and fire departments of cities and villages, under any appointment or contract of hire, express or implied, oral or written except any official of the state, or of any county, city, township, incorporated village or school district therein. Provided that nothing in this act shall apply to policemen or firemen in cities where the injured policemen or fireman are eligible to participate in any policemen's or firemen's pension funds which are now or hereafter may be established and maintained by municipal authority under existing laws."

In the above quotation it is noted that the act shall not apply to firemen in cities where the injured fireman was eligible to participate in any firemen's pension fund now or hereafter established and maintained by municipal authority under existing laws.

The words "existing laws" mean laws in existence at the time of the passage of this statute, which passage was, in so far as the words "existing laws" are concerned, first on the twenty-sixth day of February, 1913. The section was amended several times, but no change was made therein as to the reading of the last sentence of part 1 of General Code Section 1465-61, as above quoted, which

section was passed in its present form on April 17, 1919, (108 O. L., Part I, p. 316).

As to the meaning of "existing laws" in *Lawrie v. State*, 5 Ind., 525, 526, it is said:

"'Existing laws,' as used in 1 Rev. St. 1852, c. 92, providing that all crimes and misdemeanors committed under existing laws shall be punished in the same manner and to the same extent as if such laws had not been repealed, 'refers to the laws in existence at the time of the passage of the act.'"

In *City of Jonesboro v. Cairo*, 110 U. S., 192, it is said:

"The clause of Const. 1870, declaring that no county, city, town, township or municipality shall ever become subscribers to the capital stock of railroad or private corporation, or make donation to or loan its credits to such corporation, but providing that the clause shall not defeat the right of any municipality to make such subscription where the same have been authorized 'under existing laws' by the vote of the people prior to the adoption of the constitutional provision, meant under laws existing at the time of the adoption of the Constitution rather than to the time when the vote of the people was taken."

The firemen's pension fund law, in existence at the time of the passage of General Code Section 1465-61, was contained in General Code Sections 4600 et seq. This act creating the firemen's pension fund was passed by the General Assembly April 4, 1909, and provides for the levying of a tax for the purpose of establishing and maintaining such fund, as well as other means for its maintenance in case a tax is not properly levied. This act is permissive. Municipalities might create such a fund should they see fit to declare the necessity therefor.

Under the interpretation of the term "existing laws," in the above cited cases, this last referred to act, being the only law relating to firemen's pension funds in existence at the time of the passage of General Code Section 1465-61, can be the only law in the mind of the general assembly and it was firemen protected by such pension fund then established, or established later under that law, which exempts city firemen from the protection of state industrial insurance.

Under the firemen's pension act of April 4, 1909, the tax levying section is in part as follows:

"Sec. 4605. In each municipality availing itself of these provisions, to maintain the firemen's pension fund, the council thereof each year, in the manner provided by law for other municipal levies, and in addition to all other levies authorized

by law, may levy a tax of not to exceed three-tenths of a mill on each dollar upon all the real and personal property, as listed for taxation in such municipality. * * *

March 30, 1921, the general assembly passed the act (Senate Bill No. 86) providing for a firemen's indemnity fund in municipalities which had no such fund. These words in the title of the act are immediately followed by Section 1 of the act which provides an indemnity fund in municipalities having no pension fund. This act in no way changes the pension fund as provided by General Code Section 4600, et seq., but said bill, in the last paragraph of General Code Section 4647-8, reads as follows:

"Nothing in this act contained shall be deemed to preclude or limit any municipality from availing itself of the provision of chapter I, title 12, division 6 of the General Code of Ohio, and a municipality having a fireman's indemnity fund created and maintained under the provisions of this act may at any time avail itself of the said provisions of the General Code and thereupon the provisions of this act shall not apply to such municipalities."

However, it is believed that Senate Bill 86, 109 O. L., 90, is supplemental to the pension fund law provided by General Code Sections 4600 to 4647, inclusive. In fact the code sections of Senate Bill 85 are indicated as 4647-1, et seq. It seems apparent that the principal intention of the general assembly was to make mandatory the act contained in General Code Sections 4600, et seq.

General Code Section 4647-1 is as follows:

"That in all municipalities having no firemen's pension fund created under the provision of chapter I, title 12, division 6 of the General Code of Ohio, and having and maintaining therein a fire department supported in whole or in part at public expense, a firemen's indemnity fund shall be created and disbursed as herein provided."

The tax levy in Senate Bill 86 was the same as the pension law tax levy, and Section 4647-4 is in part as follows:

"The council or other authority charged with the duty of levying municipal taxes shall at the time next occurring after the creation of such board, and in the manner provided by law for the levying of other taxes for municipal purposes, levy not more than three-tenths of one mill upon each dollar of the taxable property in such municipality, * * *"

Certain rules as to payment of benefits are specified in Senate Bill 86, where such rules were before left to the pension fund trustees under General Code Section 4600, et seq.

The indemnity fund and the pension fund were both for the protection of firemen and are considered to be the same. Courts have held that there is no magic in a word. Here the purpose of the fund is identical. Based on the above observations, it is believed that the effect of Senate Bill 86 was to make mandatory a law which before was permissive and that therefore the fund provided by Senate Bill 86 was authorized by General Code Sections 4600, et seq., at the time of the passing by the general assembly of General Code Section 1465-61.

In a former opinion of the attorney general, 1920 Opinions, 415, at page 416, after referring to court decisions, it is said:

"It will be observed that in effect the operation of a supplemental section is very similar to an amendment. As stated by the lexicographers, 'to supplement' means 'to fill up or supply by additions; to add to or something added to a thing to complete it.' In fact the authorities generally concede that a supplement to a statute is a form of amendment and the courts have frequently held that an amended section is to be treated as if it were a part of the original act.

The supplement under consideration is of the same general import as the original section; that is, it relates to the protection, safety and health of the mining employee."

This brings us to the conclusion that firemen of cities participating in funds established under the provisions of General Code Sections 4600, et seq., or Senate Bill 86 are prohibited from participation in state industrial insurance.

Referring again to General Code Section 1465-61, the last sentence of part one of that section reads as follows:

"Provided that nothing in this act shall apply to policemen or firemen in cities where the injured policemen or firemen are eligible to participate in any policemen's or firemen's pension funds which are now or hereafter may be established and maintained by municipal authority under existing laws."

It is to be noted that in part one of said General Code Section 1465-61 cities and incorporated villages are mentioned at least twice. This makes it quite apparent that the General Assembly meant what it said when it exempted firemen of cities only from the protection of state insurance. The general assembly knew of protection afforded firemen when it passed Section 1465-61 and it exempted from the protection of state insurance city firemen only.

We must interpret what the legislature said and not what it intended to say. In *Sheu v. State*, 83 O. S., 146, the court said:

"In the construction of a statute the question is, what did

the legislature mean by what it said; but not, what it meant to say."

In *Sipe v. State*, 86 O. S., 80, it is said:

"If the language of the statute is clear and unambiguous, the intention thus expressed must be given effect by the courts, even if it is absurd or unjust."

In *Elmwood Place v. Schanzle*, 91 O. S., 354, the court said:

"The question is, what is the meaning of that which the General Assembly enacted; and not, what did the General Assembly intend to enact."

From the plain wording of the statute city firemen are exempted from and village firemen are included in the protection of state industrial insurance.

Sight has not been lost of the possible question of the uniform operation of this law, but no opinion is given on that point.

You are therefore advised that firemen of cities protected by a fund established under General Code Sections 4600, et seq., or General Code Sections 4647-1, et seq., are exempted from the benefits of state industrial insurance, while firemen of villages are entitled to the protection afforded by funds created under the above mentioned sections and the protection of the state industrial insurance.

J

Where it is Desired to Transfer School Territory Under Section 4696, G. C., and Such School Territory is Taken from More Than One School District, a Petition (Required for a Mandatory Transfer of Such School Territory) Should Be Presented from Each School District and Must Contain at Least Seventy-Five Per Cent of the Electors in Each School District Residing in the Territory Proposed to Be Transferred.

No. 2917—(Opinion-Dated March 9, 1922.)

Hon. Jonathan E. Ladd, Prosecuting Attorney, Bowling Green, Ohio:

Dear Sir—Acknowledgment is made of the receipt of your request for the opinion of this department upon the following statement of facts:

"A petition of which the following is a copy was presented to the County Board of Education of Henry County:

'Petition for Transfer of Territory.

We, the undersigned legal voters do hereby petition the Henry County Board of Education to transfer the territory described below from the Henry County School District to the Wood County School District as provided in Section 4696, General Code of Ohio:

The east 360 acres of the south three quarters ($S\frac{3}{4}$) and the northeast quarter ($NE\frac{1}{4}$) of section thirty-six (36), Damascus Township, town five north, range eight east, and the south 68.24 acres of the northeast one-fourth of section one (1), Richfield Township, town four north, range eight east, all in Henry County, Ohio.

(Signatures of Seven Petitioners.)'

The Henry County Board found that the petition was signed by more than seventy-five per cent of the electors residing in the territory to be transferred, which territory was a part of the Henry County School District. Thereupon a resolution was duly passed by said board transferring said territory. It was later ascertained by said board that the territory described in said petition was a part of two separate rural school districts, to wit, Richfield Township Rural School District and Damascus Township Rural School District, said Henry County, and while there was more than seventy-five per cent of the electors residing in the territory of the Richfield Township Rural School District, it did not contain seventy-five per cent of the electors residing in the territory of the Damascus Township Rural School District. Whereupon the Henry County Board of Education rescinded its action as to the transfer of the territory in the Damascus Township Rural School District and refused to order such transfer unless a separate petition were presented signed by more than seventy-five per cent of the electors residing in the territory of the Damascus Township Rural School District, sought to be transferred.

Query: Was it mandatory upon the County Board of Education of Henry County to transfer the territory described in the petition, which was a part of the Henry County School District and contiguous to the Wood County School District, or is it necessary that the petition be signed by more than seventy-five per cent of the electors of the territory in each school district?"

Sections 4696, G. C., upon which your inquiry is based and as amended in S. B. 102, 109 O. L., page 65, now reads:

"A county board of education may, upon a petition of a majority of the electors residing in the territory to be transferred, transfer a part or all of a school district of the county school district to an exempted village, city or county school district, the territory of which is contiguous thereto. Upon

petition of seventy-five per cent of the electors in the territory proposed to be transferred the county board of education shall make such transfer. A county board of education may accept a transfer of territory from any such school district and annex same to a contiguous school district of the county school district.

In any case before such a transfer shall be complete (1) a resolution shall be passed by a majority vote of the full membership of the board of education of the city, exempted village or county school district making or accepting the transfer as the case may be. (2) An equitable division of the funds and indebtedness between the districts involved shall be made by the county board of education, which in the case of territory transferred to a county school district shall mean the board of education of the county school district to which such territory is transferred, and (3) a map shall be filed with the county auditor of each county affected by the transfer. When such transfer is complete the legal title of the school property shall become vested in the board of education of the school district to which such territory is transferred."

This section and the manner of procedure thereunder and the rights of the petitioners as mentioned therein is very fully discussed in Opinion 2432 issued by this department on September 21, 1921, to the Superintendent of Public Instruction, the syllabus of such opinion reading as follows:

"1. Under the provisions of Section 4696, G. C., for a county board of education to accept a transfer of territory from an exempted village school district, such transfer must be petitioned for by a majority of the electors residing in the territory to be transferred, and a resolution of the board of education of the exempted village district concerned, offering to yield such territory, is not sufficient basis for the county board of education's acceptance.

2. Under the provisions of Section 4696, G. C., in order to make it obligatory for the county board of education to accept a transfer of school territory from an exempted village school district or a city school district, or another county school district, the petition presented from the school territory to be transferred must contain the signatures of seventy-five per cent of the electors residing in such school territory."

This opinion (No. 2432) was issued to the Superintendent of Public Instruction in reply to an inquiry in which the leading feature was the transfer of territory from an exempted village school district since transfers of territory to or from an exempted village school district fall within the provisions of Section 4696, G. C.

Thus, in considering Section 4696, G. C., and in arriving at the conclusions set forth in Opinion 2432, the question in mind was a transfer of territory under Section 4696, G. C., from a single school district to another school district and not upon the question as to where a transfer was to be made from two school districts to another county school district as is apparently the case which you present. The use of the words "school territory" as appearing in Opinion 2432 and also in the syllabus of such opinion therefore refers to the school territory which lies in a single district which it is desired to transfer to a city, exempted village, or county school district.

The first two sentences of 4696, G. C., in which your question really lies read as follows:

"A county board of education may, upon a petition of a majority of the electors residing in the territory to be transferred, transfer a part or all of a school district of the county school district to an exempted village, city or county school district, the territory of which is contiguous thereto. Upon petition of seventy-five per cent of the electors in the territory proposed to be transferred the county board of education shall make such transfer."

It will be noted in the above section that the county board of education may transfer "a part or all of a school district of the county school district" and the section does not say "a part or all of a school district or two or more school districts." The county board of education may transfer a part of a school district of a county school district; or it may transfer all of a school district of the county school district. Here we have a clear inference that the transaction under 4696, G. C., where a petition for transfer is necessary is a transaction limited to a single school district, for "school district" is used in the singular and not in the plural sense. After using "school district" in the singular, we then have this language that "Upon petition of seventy-five per cent of the electors in the territory proposed to be transferred." This latter sentence of Section 4696, G. C., taken singly and alone does not of itself indicate what is the "territory proposed to be transferred" so it is necessary to read this sentence in conjunction with the first sentence of 4696 so that "the territory proposed to be transferred" is necessarily "a part or all of a school district of the county school district" and not a part of two school districts of the county school district, nor all of two school districts of the county school district. The reason for this is rather plain. In the case which you submit-

ted, your statement shows that seven petitioners constituted more than seventy-five per cent of the electors residing in a piece of territory which as a whole was taken from Richfield rural school district and Damascus rural school district in Henry County. In other words, parts of two school districts joined in a single petition to the county board of education for the transfer in one transaction of a part of each of the two school districts. The petition presented contains more than seventy-five per cent of the electors residing in the territory of the Richfield Township rural school district, but did not contain seventy-five per cent of the electors residing in the territory proposed to be transferred from the Damascus Township rural school district. The intent in Section 4696, G. C., as last amended is to take care of the rights and desires of the electors in a school district, hence the provision for the petition and the further provision for a mandatory transfer when seventy-five per cent of the electors sign the petition. In practical operation, if it could be held that seventy-five per cent of the electors residing in a territory set out in the petition and not all coming from one school district could mandatorily bring about such transfer under Section 4696, G. C., then it would be possible for seventy-five per cent of the names, or practically all the names to come from one school district a portion of which decided to be transferred and by simply joining contiguous territory in another school district on their prepared map and name the same in the petition, they could force the school territory lying in the second district to be mandatorily transferred to another county school district when possibly a majority in the second rural school district did not desire to be transferred at all. A case might exist where in the first school district there was one kind of school condition, and in the adjoining, or second school district there was another kind of school condition. The electors in the part of the first named district might desire a transfer to another county school district, while the electors in the part of the second school district would not desire to leave their school district at all. In the first named district there might be no consolidation or centralization of schools or any tendency on the part of the local board of education to furnish transportation facilities, while in the second district it may have centralization or consolidation of schools with transportation furnished. It can hardly be contemplated that it was the intent of the General Assembly that where a school district or a portion of it was satisfied with its own local school procedure, that a corner of such school district could be mandatorily transferred to another county school district by

being attached on a map to a portion of a contiguous school district and a petition presented for transfer under Section 4696, G. C., where the petitioners very largely came from the other district, and the required number in the local district itself showed no desire to be transferred. To all appearances this would be taking advantage of electors in a second district by simply placing them on a map as attached territory to be considered and adding them as a part of the territory described in the petition and taking from them the right of local representation on an educational matter of this kind.

In reply to your inquiry, then, you are advised that it is the opinion of this department that:

Where it is desired to transfer school territory under Section 4696, G. C., and such school territory is taken from more than one school district, a petition (required for a mandatory transfer of such school territory) should be presented from each school district and must contain at least seventy-five per cent of the electors in each school district residing in the territory proposed to be transferred.

SUPREME COURT

MOTION DOCKET

17354—The Citizens Savings & Trust Co., Trustee, et al. v. The Cincinnati & Dayton Traction Co. et al. Motion by plaintiff to dispense with printing testimony, exhibits, etc., in cause No. 17354, on the General Docket. Sustained.

17366—Charles P. Jones v. Erie Railroad Co. Motion for an order directing the Court of Appeals of Mahoning county to certify its record. Sustained.

17384—James C. Davis, Director General of Railroads, v. William Walker. Motion for an order directing the Court of Appeals of Mahoning county to certify its record. Overruled.

17385—The Hartford Accident & Indemnity Co. v. Blanche M. Scott. Motion for an order directing the Court of Appeals of Cuyahoga county to certify its record. Overruled.

17387—Rodney J. Sanborn v. Mamie Sanborn. Motion for an order directing the Court of Appeals of Lawrence county to certify its record. Sustained.

17406—State of Ohio v. George V. Karsch. Motion for an order directing the Court of Appeals of Columbiana county to certify its record. Dismissed.

17407—Adolph S. Rexinger, doing business as Bernheim, Rexinger &

Co. v. Frank Mus. Motion for an order directing the Court of Appeals of Hamilton county to certify its record. Overruled.

17470—Harvey Steadman v. State of Ohio. Motion by plaintiff for suspension of sentence in Cause No. 17470 on the Motion Docket. Stay of execution of sentence granted to May 15, 1922. \$2,000 bond.

GENERAL DOCKET

16895—Wilson & Co. v. The M. Werk Co. Franklin. Judgment affirmed.

17037—Nettie Poe Ketcham v. Frank F. Miller et al. Lucas. Judgment affirmed.

17057—Mahoning & Shenango Ry. & Light Co. v. Sally Leedy. Mahoning. Judgment reversed.

17071—Herschel V. O'Day et al. v. Patrick J. Shouplin. Clark. Judgment affirmed.

17206—Joseph Rawson et al. v. Albert T. Brown. Hamilton. Judgment affirmed.

17207—Joseph Rawson et al. v. Albert T. Brown. Hamilton. Judgment affirmed.

17209—The State, ex rel. F. M. Leaverton et al., v. J. S. Kearns, Auditor of Highland county et al. Highland. Judgment reversed.

SECRETARY OF STATE

NEW CORPORATIONS

The American Steel Container Co., Cleveland, \$5,000. I. P. Warner, G. A. Doyle, I. L. Nichols, L. S. Leppla, O. E. Shaw.

The D. H. Owen Feed Co., Youngstown, \$10,000. D. H. Owen, Joanna Boshin, L. E. Geuse, Ethel Douglas Geuse, Florence E. Douglas.

The Lehman Metallic Core Co., \$30,000. Paul Richard, Erich Lehman, P. Koeunetke, J. E. Carrard, Arthur Getter, J. L. Hoover.

The Orth Williams Co., Columbus, \$25,000. C. F. Orth, E. E. Williams, W. S. Williams, Blanche Williams, R. M. Orth.

The Bath-Longoria Radiophone Co., Cleveland, \$25,000. L. C. Spieth, J. P. Taggart, W. L. Spring, H. M. Dwyer, L. A. O'Neil.

The Cleveland Plastering Co., Cleveland, \$10,000. L. Zampel, W. L. Hunter, A. L. Talcott, F. B. Kennedy, L. W. Adler.

The West Third Frankfort Bldg. Co., Cleveland, \$500. M. E. Meisel, L. Kelly, W. I. Lewis, E. M. Martin, F. C. Raymond.

The Pearl Constr. Co., Cleveland, \$500. P. L. Graham, R. L. Davis, F. H. Sellberg, G. A. Robinson, A. W. Thomas.

The Ohio Falls Oil, Gas & Supply Co., \$100,000. J. D. Brown, A. R. Maish, E. V. Gettridge, C. W. Blackstein, F. C. Robinson. (Columbus)

The Farmers Warehouse Cat., Waterford, \$5,000. O. D. Owen, G. E. Morris, A. M. Gray, Ivan Taylor, S. M. Humston.

The Fisher-Aeschbach Co., Cincinnati, \$15,000. C. H. Fisher, G. E. Fisher, M. S. Fisher, A. Aeschmaach, A. L. Wolf.

The Sanitary Cement Prod. Co., Cleveland, \$6,000. B. A. Buopane, L. J. Albeny, Angelo Dormendo, M. B. Rosenzweig, A. Krejci.

The Old Trail's Garage & Service Co., Hebron, \$1,000. S. R. Wilson, F. A. Schimmel, A. I. Wilson, H. H. Schimmel, Carl Donahue.

The Lorain Es Videke Pub. Co., \$20,000. Lorain. M. M. Barta, Harry Gadel, Norman Donahus, Anna Mo-

lyck, A. C. Calhoon, C. E. Van Deusen.

The Newburg Realty Co., Cleveland, \$10,000. B. D. Kuth, P. M. Berry, Ovid L. Dally, M. M. Madden, J. H. Miller.

The Power Oil Co., Columbus, \$30,000. H. L. Johnson, M. M. Koming, A. C. Wilde, R. L. Turner, Addison Leffel.

The B. P. Mates-Brown Co., Cleveland, \$10,000. Chas. Brown, F. B. Brown, R. J. Brown, B. P. Mates, Ida Mates.

The Pearl Motor Co., Canton, \$15,000. M. A. Loeser, I. J. Warner, I. N. Loeser, H. Stewig, I. L. Nichols.

The Great Lakes Sav. & Loan Co., Cleveland, \$1,000,000. B. D. Kuth, P. M. Barry, M. M. Madden, O. L. Dally, J. H. Miller.

The Superior Radio & Telephone Equipment Co., Columbus, \$1,000. H. S. Binns, P. Cozad, E. Braunier, S. P. Outhwaite, Carl Tresemer.

The Lake City Investment Co., Toledo, \$750. Hy Davis, C. W. F. Kirkley, H. B. Van Sickle, F. P. Flowers, W. C. Rowe.

The Supreme Tailoring Co., Cleveland, \$10,000. J. Lissauer, Sam. Bernstein, Marbuerite Mendelsohn, Mildred Moses, Isadore Tamler.

The Cleveland Piston Pin & Bolt Co., Cleveland, \$2,500. R. E. Collins, A. F. Gaughan, T. A. Gillespie, E. E. Thomas, M. R. Scully.

The Northwestern Light & Power Co., Toledo, \$120,000. Justice Wilson, N. M. Rahla, R. M. Zahrlly, M. C. Boesel, C. J. Aplegate.

The Commercial Bldg. Co., Toledo, \$500. W. H. Yeasting, W. Stewart, F. E. Stewart, H. W. Wachter, Stanley Roberts.

The Zanesville Mortgage Co., Zanesville, \$500. A. G. Gilmore, R. C. Burton, W. E. Helmick, S. A. Scatterday.

The Wellman Wieber Checkers Co., Cleveland, \$500. Wm. A. McAfee, C. M. Buss, A. B. Oakes, B. C. Walsh, C. E. Van Gorder.

The Rogers Radio Mfg. Co., Akron, \$1,000. G. D. Rogers, H. G. Thompson, W. H. Spencer, Thelma Cox, W. E. Holden.

The Hefling Piano Co., New Philadelphia, \$10,000. G. T. Brister, Arthur Wagner, Joseph H. Streb, Herman C. Hefling, Ida May Hefling.

The Orinocco Investment Co., Cleveland, \$100,000. A. C. Berry, H. Carl Haag, W. R. Gerhan, H. W. Gerhan, F. L. McMillan.

The Euclid Auto Body Repair Co., Cleveland, \$5,000. Dave Miller, S. A. Goldstein, Harry Laserson, M. Palevsky, S. Horowitz, Ethel Miller.

The Mintz Piano Co., Cleveland, \$10,000. Sam Mintz, Fred S. Neubauer, David L. Schiff, A. R. Goold, Jos. L. Spitz.

The Rite-Way Mfg. Co., Toledo, \$25,000. C. J. Sersain, William F. Miller, H. E. Fouts, B. O'Brien, W. W. Campbell.

The C. H. Edick Co., Lorain, \$25,000. C. H. Edick, W. L. Morgan, Elida M. Edick, A. V. Hageman, Agnes C. Alger.

The Better-Made Clothes Shop Co., Cincinnati, \$10,000. Joseph Moorman, Dave Arnet, Frank Burbank, Moses Viner, Harry Vandt.

The Home Savings & Loan Co., Wadsworth, \$1,000,000. E. J. Carlson, J. C. Mathieus, R. V. Steele, H. H. Montis, B. J. Fusner.

The Stillwater Clay Prod. Co., Uhrichsville, \$15,000. D. K. LaPorte, J. J. Pearch, H. W. Westhafer, J. A. Barkley, H. B. Cameron.

The Newark Amusement Co., Newark, \$50,000. Clarence E. Jones, D. L. Hawkins, L. A. Bentz, P. E. Taylor, F. H. Young.

The Comet Battery Co., Cleveland, \$500. Martin C. Krogh, B. E. Nesbitt, Wm. Underwood, Harry E. Barr, E. K. Curtiss.

The Triangle Clay Co., Uhrichsville, \$100,000. J. W. Askins, A. V. Sturgeon, J. W. Moore, F. B. Maurer, W. G. Maurer.

The American Stamping Co., Cleveland, \$500. E. H. Krueger, H. W. Keller, Herman J. Nord, F. H. Pelton, F. H. Sellberg.

The L. C. Evans Co., Cleveland, \$10,000. I. E. Guentzler, I. E. Brick, E. Williams, M. Junke, C. L. Brueggemyer.

The San Francisco Co., Cincinnati, \$55,000. Thomas L. Sidlo, Mary G. O'Brien, Benj. F. Fiery, M. J. Monahan, B. W. Jacobi.

The Nimissila Club Co., Massillon, \$120,000. C. W. Stuart, Arthur T.

Ellis, Edw. F. Davies, C. E. Swanson, J. G. Lester.

The Ashtabula County Bond and Mortgage Co., Ashtabula, \$500. Lee Root, A. V. Hillyer, C. W. Randall, Kathryn Root, H. J. Shann.

The O'D Process Co., Cincinnati, \$10,000. Edward C. Jeffre, M. A. Wood, Walter C. Taylor, John D. Ellis, Alfred T. Geisler, M. A. Wood.

The Lincoln Co., Akron, \$10,000. Vernon C. Lincoln, James B. Fallon, Lela J. Lincoln, Laurence M. McDermott, Mildred H. Lincoln.

The High Pressure Gas and Oil Co., New Matamoras, \$100,000. C. A. Amos, W. E. Kollman, Fred N. Stover, H. C. Roe, J. H. Laufer.

The Grant-Holub Co., Canton, \$25,000. David C. Holub, Harry W. Holub, M. E. Amer, H. H. Stehle, Bernard J. Amer.

The Union Engineering Sales Co., Cleveland, \$500. Edward Younger, L. M. Sewell, A. J. Pejisa, A. E. Rogers, Gilbert Morgan.

The Portsmouth Cement & Lime Co., Portsmouth, \$12,000. W. F. Seymour, F. C. Fuller, P. E. Watkins, Jos. T. Micklethwait.

The Dakota Realty Co., Cincinnati, \$100,000. Froome Morris, J. R. Calderine, Stanley A. Hooker, Helen Dunbar, August J. Knapp.

The G. A. Sheard Tire Co., Oxford, \$10,000. Gilbert A. Sheard, Marshall C. Murray, J. Arthur Sheard, George E. Sheard, Mrs. Gilbert Sheard.

The Bellefontaine Lumber Co., Bellefontaine, \$80,000. George E. Knowlton, Clarence L. Knowlton, John S. Makemson, Gail G. Hamilton, Samuel W. Huffer.

The Lyndale Realty Co., Cleveland, \$10,000. Wm. Howell, C. M. Knight, L. E. Rice, M. R. Williams, V. M. Rohman.

The A. W. Davis Printing Co., Norwalk, \$10,000. Albert W. Davis, Emma L. Davis, William A. Hackney, Eugene F. Lamb, Augusta F. Hohlmeyer.

The J. W. Wainwright Co., Fostoria, \$25,000. J. W. Wainwright, Charles C. Hazen, Ubo Riedel, Todd G. Simon, Jos. R. Lopez, Herman Cooper, Byron F. Aldrich.

The Mowbray & Robinson Lumber Co., Cincinnati, \$100,000. F. W. Mowbray, E. O. Robinson, Joseph J. Linehan, Ben Rubenstein, Ross W. Sloniker.

The Overlook Savings & Loan Co., Cincinnati, \$500,000. L. E. Schuch, J. D. Prout, Wm. Deddens, Edward B. Hughes, E. Edams, Roy Rengers, C. W. Juergens.

The Regent Furniture Co., Cleveland, \$1,000. Leo Weil, Alex Bernstein, Herman H. Finkle, M. Kritzer, A. L. Lang.

The Pan American Trading Co., Cleveland, \$10,000. A. G. Fuzon, H. Biel, C. A. Patterson, Ferd. Jirsa, W. Davis.

The Center-Noble Realty Co., Cleveland, \$11,000. Wm. A. McAfee, C. M. Buss, A. B. Oakes, B. C. Walsh, C. E. Van Gorder.

The H. P. Preis Co., Columbus, \$10,000. H. P. Preis, C. G. Rinninsland, S. A. Hoover, M. B. Whaley, Grace M. Armbruster.

The Packard-Akron Motor Co., Akron, \$50,000. H. E. Andress, D. W. Maxon, C. G. Wise, R. M. Cobbs, P. C. Weick.

The Globe Automobile Co., Cincinnati, \$50,000. M. F. McDermott, J. A. Emslie, A. A. Kattus, Wheeler Boone, C. R. Thomas.

The M. & H. Realty Exchange Co., Cleveland, \$10,000. M. Ellinson, J. H. Casper, H. B. Olson, Mike Orenich, H. A. Carder.

The Colonial Products Co., Dayton \$10,000. A. K. Meck, S. S. Markham, Claudia K. Engle, Irene E. Tyler, C. R. Curtner.

The L. F. Otten Mfr. Co., Cincinnati, \$25,000. L. F. Otten, J. Chas. Hummel, G. C. Otten, R. E. West, Antoine Werner West.

The Emrich Lumber Co., Cleveland, \$120,000. J. M. Emrich, Asher Levin, J. Jaffe, E. M. Emrich.

The O'Donnell Paint & Wall Paper Co., Elyria, \$30,000. A. P. J. O'Donnell, A. C. O'Donnell, B. M. O'Donnell, L. B. Fauver, J. F. O'Donnell.

The James-Victor-Evans Co., Steubenville, \$25,000. V. A. Beebe, F. E. Evans, E. Jones, W. C. Roberts, C. Q. Arhaugh, C. A. Jones.

The Queen City Club Realty Co., Cincinnati, \$5,000. C. P. Taft, Wm. Cooner, W. S. Rowe, H. W. Worchester, John Amwake, G. W. Armstrong, Jr. Lawrence Maxwell.

The Greenville Furniture Co., Greenville, \$25,000. C. J. Miller, W. C. Dietz, J. A. Folkerth, Chalmer Kreider, H. E. Miller.

The Lane Laboratories Co., Van Wert, \$600. Herman Chidester, F.

G. Owens, C. M. Young, Eugene F. Lane, C. A. Fast.

The Electro-Noelty Co., Shelby, \$25,000. W. D. Hood, A. F. Johnson, H. F. Broomhall, Geo. Vuille, R. F. Moore.

The Victor Sales Co., Cleveland, \$10,000. H. T. Rawlings, B. A. Johnston, Merle V. Cox, H. D. Harrington, Geo. De Frieze.

The Sterling Stove Co., Portsmouth, \$10,000. H. F. Bertram, B. W. Hopkins, Henry Scott, J. D. Bryan, R. G. Bryan.

The Interstate Auto Products Co., Sandusky, \$5,000. O. A. Reinke, Alvin Reinke, E. M. Reinke, H. F. Olrich, R. A. Friedlander.

The Cleveland Pencil and Gold Stamping Co., Cleveland, \$15,000. G. H. Ziska, E. W. Amwalt, R. F. Engel, E. F. Engel, H. G. Collins.

The Matro Club Co., Cleveland, \$50,000. D. R. Barkin, Wm. Carpel, Ben Cohen, J. E. Cole, A. S. Ginn, Milton Grantz, Morris Jaffee, Sam Landy.

The Brotherhood Savings & Loan Co., Cleveland, \$500,000. R. L. Bailey, Esther J. Brooker, C. Brooker, L. M. Mackin, H. Barnhisel.

The One Dollar Profit Tire Co., Ash-tabula, \$10,000. H. D. Cook, M. J. Cook, E. S. Dempsey, N. T. Cook, P. R. Miller.

The Newton State Bank, New Falls, \$25,000. J. O. Foulk, H. M. Mealy, J. M. Hurd, W. F. Andrews, F. W. Cory.

The Gabriel Realty Co., Cleveland, \$10,000. A. Leibowitz, Anna Leibowitz, Louis Moscovitz, Sol Edgert, A. D. Glora.

The Keyston Theatre Co., Cleveland, \$10,000. Sol Edgert, Max Lefkovich, Harry Greenberger, A. D. Glora, G. E. Schwarm.

The Romie Clay Product Co., Ur-richsville, \$200,000. P. A. Romie, C. W. Rosel, Alex Robinson, E. R. Van-ostrian, J. J. Peach.

The Pearl Road Lumber Co., Cleveland, \$50,000. J. H. Kelloe, E. B. Freed, B. S. Brady, I. W. Sharp, R. Hall.

The Thompson Light & Power Co., Thompson, \$10,000. W. R. Klasen, B. G. Crandall, C. T. Crocker, P. J. Smith, A. T. Oaklev.

The Ohio Cash Register Co., Day-ton, \$300,000. George N. Lingham, William M. Carroll, Fowler Mould, Clarence E. Bleicher, Andrew S. Id-dings.

The Olympic Billiards & Candy Co., Akron, \$500. Fred W. Gayer, H. J. Bradshaw, John Aitkenhead, G. C. Dietz, Alfred Herberich.

The Prezinger Drug Products Co., Dayton, \$500. H. A. Rietdyk, Chas. T. Ware, I. F. Craig, Isaac Warner, I. I. Hauer.

The Liberty Construction Co., Youngstown, \$500. C. F. Dinglady, Robert Knox, E. C. Clair, M. G. Lyle, B. M. Binder.

The Goldblatt-Baxter Building Co., Cincinnati, \$10,000. W. H. Baxter, F. D. Heimbald, George W. Benckstein, George E. Meyer.

The Eberhardt-Ott Electric Co., Cleveland, \$10,000. Aug. H. Eberhardt, N. L. Eberhardt, A. H. Eberhardt, Jr., W. R. Eberhardt, Edward Ott.

The Ohio Soap Co., Cleveland, \$10,000. Charles L. Schofer, A. M. Klein, H. Bollotin, Harry E. Davis, H. T. Hoffman.

The Lostro Supply Co., Athens, \$50,000. J. R. Lostro, F. B. Woosley, F. L. Alderman, Blanche C. Lostro, Flora Lostro.

The Cleveland Building & Remodeling Co., Cleveland, \$10,000. Suggs Garber, Henry S. Gottfried, C. Gottfried, Helen C. Davis, Joseph S. Silber.

The R. F. Ehler Specialty Co., Dayton, \$1,000. Ralph F. Ehler, E. C. Baver, E. L. McCleary, R. W. Lehman, J. F. Ehler.

The Badman Mfg. Co., Cincinnati, \$10,000. J. D. Lyon, D. M. Lyon, Robert J. Badham, Loren G. Gatch, John N. Gatch.

The Sidney Grain Machinery Co., Sidney, \$60,000. L. M. Studevant, William Jaffe, Andrew J. Hess, Jacob Solomon, Royon G. Hess.

The Lake Erie Bolt & Nut Co., Cleveland, \$500. I. W. Sharp, Wm. R. Daley, N. K. Dorr, E. Harper, F. F. Deam.

The Industrial Nickel Prod. Co., Cleveland, \$500. J. E. Morley, Leslie Nichols, King Tolles, John M. Garfield, Henry A. Marting.

The Maccabbe Home Co., Woodfield, \$10,000. C. J. Rausch, George Weber, Charles Weber, Wm. Brooks, George Holtsclaw.

The Steson-Harwill Co., Cleveland, \$25,000. Vance Stewart, C. L. Williams, Jr., John H. Jameson, John M. Harris, C. Davis.

The Globe Suit & Skirt Co., Cincinnati, \$10,000. Irwin Levy, Henry J. Lewis, Steve Derezhich, S. I. Levy, R. M. Lewis.

The Ohio Chase Co., Cleveland, \$5,000. George G. Whitcomb, H. A. Kramer, Carl K. Lenz, W. B. Fairfield, E. J. West.

The Sunset Point Allotment Co., Cleveland, \$10,000. A. H. Goldman, S. A. Thorman, Lester E. Robinson, S. Z. Brown, Bessie Hamilton.

The Gebhardt Brothers Co., Cincinnati, \$225,000. Victor A. Gebhardt, G. F. Gebhardt, William H. Niehaus, J. A. Wilson.

The Rolanda Home Builders' Finance Co., Canton, \$6600. Alva E. Smith, Walter A. Rabold, James M. Smith, Edward S. Miller, B. F. Rowland.

The Sal-Vet Prod. Co., Mentor, \$45,000. H. E. Sobul, Morris Simberg, Sam Sobul, Benjamin Goldberg, I. J. Samuels.

The Willard Savings & Loan Co., Willard, \$500,000. W. P. B. Wachtel, H. B. Mallette, Perry D. Caldwell, M. L. Higgins, C. E. Mahon.

The Ohio Tennessee Coal Co., Covington, \$10,000,000. D. G. Wenrich, Charles H. Jackson, Ellis G. Eyer, John P. Harris, L. B. Jackson.

The H. Kunkemoeller Service Co., Cincinnati, \$10,000. Henry F. Kunkemoeller, Bernard J. Kunkemoeller, A. L. Tischbein, Emma Kunkemoller, Ida Tischbein.

The Hodges Service Co., Akron, \$20,000. A. W. Haiman, D. F. Klein, S. Marx, D. A. Levine, L. M. Rich.

The Jersey Creamery Co., Hughes Station, \$4,000. William Radabaugh, Frank M. Hughes, Charley Tyson, Wm. M. Stewart, William Brophy, Elliott E. Hunter.

The Dayton R. S. C. Advertising Co., Dayton, \$10,000. Sherman B. McLaughlin, Ray M. Clemmer, Carl J. Hockey, Edna A. Hockey, Wellmore B. Turner.

The Dayton Waste Paper and Iron Co., Dayton, \$10,000. Jos. Hageman, Samuel L. Finn, A. S. Goldstein, Etta Hageman, Bessie Hayman, Lillian J. Goldstein.

Increases

The Home Telephone Co., Killbuck, \$10,000 to \$20,000.

The Bellevue Kraut & Pickling Co., Bellevue, \$25,000 to \$50,000.

PUBLIC UTILITIES COMMISSION

No. 2497—In the Matter of the Application of The Columbus Railway & Light Co. for Leave to Issue and Dispose of Certain of Its Series "A" and Series "B" Preferred Capital Stock. Prayer Granted.

(Dated March 28, 1922.)

This day, after full hearing, due notice of the time and place of which was given to all parties in interest, this matter came on for consideration upon the application of The Columbus Railway and Light Company, a corporation duly organized and existing under and by virtue of the laws of the State of Ohio.

(1) Surrendering and praying that this Commission revoke, rescind and hold for naught;

(a) The order, made and entered as of date March fifth, 1917, in proceeding No. 1087, the order made and entered as of date November 27th, 1917, in proceeding No. 1325, and the order made and entered as of date July ninth, 1918, in proceeding No. 1478, insofar as said orders authorized said applicant to issue and dispose of its Series "A" preferred capital stock of the par value of \$84,000.00, and

(b) The order made and entered as of date December seventeenth, 1921, in proceeding No. 2449, insofar as said order authorized said applicant to issue and dispose of its first and Refunding Extension, Sinking Fund, five per cent, Gold Bonds of the principal sum of \$690,000.00, and

(a) Praying authority to issue and distribute, pro-rata among the holders of its Preferred Capital Stock, Series "A" and "B," its Series "A" preferred capital stock of the par value of \$392,376.00, and its Series "B" preferred capital stock of the par value of \$836,620.00, for and on account of the expenditure, from its treasury, within the five years next preceding the date of the filing of its application herein, for capital purposes, the sum of \$1,337,196.00, none of which money was procured by the issue of stock, bonds, notes or other evidences of indebtedness, and which money said stockholders might otherwise have received, in dividends, as a return upon their investment in the capital stock of the applicant; the evidence offered at said hearing, and the argument of counsel.

The Commission, being fully advised in the premises, finds:

That, within the five years next preceding the date of the

filing of the application herein and to the thirty-first day of October, 1921, the applicant actually expended from its treasury for lawful, capital purposes, the sum of \$1,337,196.00, none of which was procured or obtained by the issue of stock, bonds, notes or other evidences of indebtedness;

That, heretofore, by the orders, made and entered as of date March fifth, 1917, in proceeding No. 1325, as of date July ninth, 1918, in proceeding No. 1478, and as of date December seventeenth, 1921, in proceeding No. 2448, this Commission consented to and authorized the issue and disposition, by the applicant herein, of Series "A" preferred capital stock of the par value of \$24,900.00, and First and Refunding Extension, Sinking Fund, five per cent Gold Bonds of the principal sum of \$690,000.00 and directed that the proceeds arising from the sale thereof be applied toward the partial reimbursement of applicant's treasury, for the aforesaid uncanceled, capital expenditures therefrom, and

That, if and as said orders aforesaid, insofar as they consent to and authorize the issue and disposition of applicant's said Series "A" preferred capital stock of the par value of \$84,000.00 and its said First and Refunding Extension, Sinking Fund, five per cent Gold Bonds of the principal sum of \$690,000.00 are revoked and rescinded, the issue and disposition of applicant's Series "A" preferred capital stock of the par value of \$392,376.00, and its Series "B" preferred capital stock of the par value of \$836,620.00 is reasonably required and necessary for and on account of the aforesaid uncanceled, capital expenditures (of the sum of \$1,337,196.00) from its treasury within the five years next preceding the date of the filing of the application herein.

and is satisfied that, if and as said consent and authority to issue and dispose of said Series "A" preferred capital stock of the par value of \$84,900.00 and said First and Refunding Extension, Sinking Fund five per cent Gold Bonds of the principal sum of \$890,000.00 (authorized by said orders aforesaid), be revoked and rescinded, that consent and authority for the issue and disposition of said Series "A" preferred capital stock of the par value of \$392,376.00, and said Series "B" preferred capital stock of the par value of \$836,620.00, should be granted. It is therefore

Ordered, That the orders, made and entered as of date March fifth, 1917, in proceeding No. 1087, as of date November seventeenth, 1917, in proceeding No. 1325, and as of date July ninth, 1918, in proceeding No. 1478, insofar as they consent to and authorize the issue and disposition, by the applicant herein, of its Series "A" preferred capital stock of the par value of eighty-four thousand, nine hundred dollars (\$84,900.00), and, as of date December

seventeenth, 1921, in proceeding No. 2448, insofar as it consents to and authorizes the issue and disposition, by the applicant herein, of its First and Refunding Extension, Sinking Fund, five per cent Gold Bonds of the principal sum of six hundred and ninety thousand dollars (\$690,000.00), be, and hereby they are revoked, rescinded and held for naught. It is further

Ordered, That said The Columbus Railway and Light Company be, and hereby it is authorized to issue its Series "A," six per cent preferred capital stock of the par value of three hundred and ninety-two thousand, three hundred and seventy-six dollars (\$392,376.00), and its Series "B," five per cent preferred capital stock of the total par value of eight hundred and thirty-six thousand, six hundred and twenty dollars (\$836,620.00). It is further

Ordered, That said preferred capital stock be issued and disposed of for and on account of the actual expenditure, within the five years next preceding the date of the filing of the application herein, and to the thirty-first day of October, 1921, of the sum of \$1,337,196.60 (none of which was obtained or procured by the issue of stock, bonds, notes or other evidences of indebtedness), from the treasury of the applicant herein for capital purposes, as more specifically set forth in the application herein, which, insofar as it describes and enumerates said expenditures, hereby is made a part of this order by reference, and on account of no other purpose whatsoever. It is further

Ordered, That said Series "A" and Series "B" preferred capital stocks may, by the applicant, be distributed pro rata among the several holders of its said Series "A" and Series "B" preferred capital stock in lieu of the aforesaid sum (not procured by the issue of stock, bonds, notes or other evidences of indebtedness), actually expended from its treasury, within the five years next preceding the date of the filing of the application herein and to the thirty-first day of October, 1921, for capital purposes, which money said stockholders might, otherwise, have received in dividends as a return upon their said investment in the capital stock of the applicant. It is further

Ordered, That if and as said Series "A" and Series "B" preferred capital stock, herein authorized to be issued, shall be so distributed among the applicant's said present stockholders, it shall thereupon charge the sum of \$1,228,996 against its surplus. It is further

Ordered, That the applicant make verified report to this Commission of the issue and disposition of its preferred capital stock herein, and, in the event of the distribution of the same among its present stockholders of the charging of the said sum of \$1,228,996.00 against its surplus.

*

No. 2463—The Columbia Products Company, Complainant, vs. The Akron, Canton and Youngstown Railway Company, et al, Defendants. Rates Fixed.

(Dated April 7, 1922.)

Complainant is a corporation engaged in the manufacture of agricultural lime at Barberton, Ohio. By complaint filed January 7, 1922, it alleges that the present carload rates of defendants for transporting agricultural lime, in intrastate traffic within the State of Ohio are unjustly discriminatory, unduly prejudicial to it and preferential of its competitors who are engaged in the manufacture, sale and shipment of agricultural limestone.

Pursuant to the order of the Commission in Docket No. 2327, dated October 24, 1921, and effective thirty days thereafter, the respondents reduced their rates on agricultural limestone to the basis in effect on August 25, 1920, or approximately 23½%. The complainant asks that defendants be required immediately to reduce their rates on agricultural lime in the same percentage amount and thereby restore the rate relationship that formerly existed between the two commodities. Prior to our order above mentioned, the agricultural limestone rates were on a basis of approximately 55% of the contemporaneous Sixth Class rate, while, under the present rate structure, the relationship to Sixth Class is approximately 37%. The rates on agricultural lime were formerly and are now on a basis of 70% of Sixth Class. The adjustment referred to has had the effect of increasing the rate differential between the two commodities by approximately 100%.

Complainant's product is a precipitated carbonate of lime. It is manufactured from what was formerly a waste material and is classified by the railroads as agricultural lime. The commodity is put up in 50-lb. paper sacks and requires tight box cars for shipment, although in the past two years, during periods of car shortage, a considerable amount was shipped in open cars, protected by tarpaulin covers. The average haul in Ohio is sixty-five miles and

the average loading per car is 37 tons. No expedited service is required on this traffic and it moves principally during the spring and fall months. Complainant's annual output during the past three or four years was approximately 35,000 tons. The present price of the commodity is \$6.00 per ton, f. o. b. plant. Loss and damage claims are negligible.

The record shows: (a) That agricultural lime (complainant's product) goes to the farmer for use as a soil corrective and is used for the same purpose and in exactly the same manner as agricultural limestone; (b) that the transportation characteristics of the two commodities are practically identical; (c) that the two commodities come into direct and sharp competition; (d) that complainant's product is more valuable than agricultural limestone, is of a finer composition, and, for that reason, will act somewhat more quickly upon the soil.

Our finding in the agricultural limestone case (Docket No. 2327 supra) sets forth in detail: The need of agricultural limestone and kindred products upon the soils of Ohio; the beneficial results to be attained by their general use, and the reasons why, considering both commercial and transportation conditions, such commodities are entitled to comparatively low rates.

It is testified that under the present rates, agricultural lime will not move in Ohio in competition with agricultural limestone; that the present rate structure has had the effect of practically eliminating complainant's product from the Ohio markets; that whereas, prior to the effective date of our order of October 24, 1921 (agricultural limestone case, Docket No. 2327), complainant was able to dispose of its entire production; since that time sales have fallen off to such an extent that today complainant has approximately 15,000 tons of manufacture agricultural lime stored in its factory warehouse, and on February 9th, last, was compelled to close down its plant on account of its storage facilities having been exhausted.

Complainant introduced, as Young's Exhibit No. 1, copy of Pennsylvania Railroad tariff I. C. C. No. F 1357; which became effective on February 1, 1922. It names interstate rates on agricultural limestone in carloads from five points in Western Pennsylvania to various destinations throughout the entire State of Ohio. The rates quoted therein represent a reduction of approximately 28½ under the rates previously in effect; in other words, they are on the same basis as the intrastate limestone rates prescribed by

this Commission in its order of October 24, 1921, Docket No. 2327 supra. The record shows that the P. & L. E. Railroad publishes similar rates on agricultural limestone from the same points of origin in Pennsylvania to destinations within the State of Ohio. The rates referred to are published to expire on July 31, 1922.

The carriers objected to the order of this Commission in the agricultural limestone case (Docket No. 2327 supra), and said order is now being contested before the Supreme Court of Ohio.

Defendants oppose the reductions sought primarily because of their own unfavorable financial condition, and, secondarily, because, in their judgment, the rates prescribed by this Commission in the agricultural limestone case (Docket No. 2327 supra) are too low. They admit that, if the Commission's order in the agricultural limestone case (Docket No. 2327 supra) should be sustained, the former rate differential between agricultural limestone and agricultural lime should be restored. The present intrastate rates on agricultural limestone were established by this Commission after an exhaustive investigation, and there is nothing in this record to convince us that they are not on a just and equitable basis, nor are we convinced that such rates operate to discriminate against interstate commerce. While the defendants submitted figures reflecting a rather unfavorable financial condition for certain periods, that fact does not preclude us from finding particular rates or rates on particular commodities to be unreasonable or unjustly discriminatory when the facts are sufficient to justify such a finding.

Upon consideration of all the facts, we find that the rates assailed are unjustly discriminatory against complainant's traffic, unduly prejudicial to complainant, and unduly preferential of shippers of agricultural limestone.

We further find that said undue prejudice and preference, and unjust discrimination can and should be removed by defendants cancelling their present rates and charges for the transportation of agricultural lime (carloads) in intrastate traffic within the State of Ohio and establishing, in lieu thereof, the rates and charges that were in effect on August 25, 1920, applicable to the same commodity.

We further find that the movement of the commodity under discussion is largely seasonable; that the spring season is one of the times of the year when such commodity moves, and that, there-

fore, the defendants should remove such unjust discrimination and undue prejudice by the publication of new rates, on one day's notice to this Commission, effective not later than April 25, 1922.

An order will enter accordingly.

Order.

This matter was submitted upon the pleadings, the evidence and exhibits, and the argument of counsel.

Upon consideration whereof, and being fully advised in the premises, and having this day made and filed in writing its findings of fact herein, the Commission further finds:

That the rates and charges now in effect and maintained, imposed, charged and collected by the defendants herein, and each of them, for the transportation, in carloads, of agricultural lime in intrastate traffic with the State of Ohio (such rates and charges being specifically set forth in the individual and joint schedules of said defendants, which schedules hereby are made a part of this finding by reference), are unjustly discriminatory against complainant's traffic; are unduly prejudicial to complainant, and are unduly preferential of shippers of agricultural limestone;

That the rates and charges which were in effect and were maintained, imposed, charged and collected by the defendants herein, and each of them, upon the twenty-fifth day of August, 1920, for the transportation, in carloads, of agricultural lime in intrastate traffic within the State of Ohio (such rates and charges being specifically set forth in the individual and joint schedules of said defendants then in effect, which schedules hereby are made a part of this finding by reference), are just and reasonable and will not be unjustly discriminatory against complainant's traffic, unduly prejudicial to the complainant nor unduly preferential of shippers of agricultural limestone;

That said undue prejudice and preference, and unjust discrimination can and should be removed by the defendants, and each of them, cancelling their present rates and charges for the transportation of agricultural lime, in carloads, in intrastate traffic within the State of Ohio and establishing, in lieu thereof, the rates and charges that were in effect on August twenty-fifth, 1920, applicable to the same commodity, and

That the movement of said commodity being largely seasonable and the spring season one of the times of the year when such commodity moves, the defendants, and each of them, should, on or before the twenty-fifth day of April, 1922, remove said undue prejudice and preference and unjust discrimination against complainant's traffic by establishing and thereafter maintaining, imposing, charging and collecting for

the transportation of agricultural lime, in carloads, in intrastate traffic within the State of Ohio, the rates and charges hereinbefore found to be just and reasonable.

It is, therefore,

Ordered, That defendants, said The Akron, Canton and Youngstown Railway Company, The Baltimore and Ohio Railroad Company, The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, Detroit, Toledo and Ironton Railway Company, Erie Railroad Company, The Hocking Valley Railway Company, The Kanawha and Michigan Railway Company, Lake Erie and Western Railroad Company, The Lorain, Ashland and Southern Railroad Company, The New York Central Railroad Company, The New York, Chicago and St. Louis Railroad Company, Norfolk and Western Railway Company, The Pennsylvania Railroad Company, The Pittsburgh and Lake Erie Railroad Company, The Pittsburgh, Lisbon and Western Railroad Company, The Pittsburgh and West Virginia Railway Company, The Toledo and Ohio Central Railway Company, The Zanesville and Western Railway Company, The Wheeling and Lake Erie Railway Company and the Youngstown and Ohio River Railroad Company, and each of them, be, and hereby they are notified, directed and required, on or before the twenty-fifth day of April, 1922, to cease and desist from maintaining, charging, imposing and collecting or attempting to maintain, impose, charge and collect for the transportation of agricultural lime, in carloads, in intrastate traffic within the State of Ohio, the rates and charges hereinbefore found and determined to be unduly prejudicial and preferential and unjustly discriminatory. It is further

Ordered, That said defendants, and each of them, be, and hereby they are further notified, directed and required, on or before said twenty-fifth day of April, 1922, to establish and thereafter maintain, impose, charge and collect for the transportation of agricultural lime, in carloads, in intrastate traffic within the State of Ohio, rates and charges not greater than nor in excess of the rates and charges for such service hereinbefore found to be just and reasonable and not unduly prejudicial or preferential or unjustly discriminatory. It is further

Ordered, That schedules be filed accordingly, effective upon
• not less than one day's notice to this Commission.

No. 2501—In the Matter of the Petition of The Mahoning Valley Water Company for Consent to Issue \$44,000.00 Preferred Stock. Prayer Granted.

(Dated April 5, 1922.)

This day, it appearing to the Commission from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, this matter came on for consideration upon the application of The Mahoning Valley Water Company (a corporation duly organized and existing under and by virtue of the laws of the State of Ohio), asking the consent and authority of the Commission to issue eight per cent preferred capital stock of the par value of forty-four thousand dollars, the proceeds arising from the sale thereof to be applied toward the reimbursement of applicant's treasury for the uncanceled, capital expenditure therefrom, within the five years next preceding the date of the filing of the application herein and to the first day of January, 1920, of the sum of \$44,086.65.

The Commission, being fully advised in the premises, finds from the pleadings and exhibits filed herein and its independent inquiry and investigation thereupon:

That within the five years next preceding the date of the filing of the application herein and to the first day of January, 1920, the applicant actually expended from its treasury for the construction, completion, extension and improvement of its facilities, the sum of \$44,086.65, none of which was procured by the issue of stock, bonds, notes or other evidences of indebtedness, and

That the issue of applicant's said preferred capital stock of the par value of \$44,000.00 is reasonably required, and the money to be procured thereby is necessary for the reimbursement of applicant's treasury for the aforesaid uncanceled, capital expenditures therefrom,

and is satisfied that consent and authority for the issue and disposition of said preferred capital stock should be granted. It is, therefore,

Ordered, That said The Mahoning Valley Water Company be, and hereby it is authorized to issue its eight per cent. preferred capital stock of the par value of forty-four thousand dollars (\$44,000.00), and that said capital stock be sold for the highest

price obtainable, but not less than the par value thereof. It is further

Ordered, That the proceeds arising from the sale of said capital stock be, by the applicant, devoted to and used for the reimbursement of its treasury for the sum of \$44,000.00, not procured by the issue of stock, bonds, notes or other evidences of indebtedness, actually expended therefrom, within the five years next preceding the date of the filing of the application herein and to the first day of January, 1920, for the construction, completion, extension and improvement of its facilities; nor shall said proceeds be used for any other purpose whatsoever. It is further

Ordered, That the applicant make verified report to this Commission of the issue and disposition of said capital stock and of the expenditure of the proceeds thereof pursuant to the terms and conditions of this order.

ATTORNEY GENERAL

Section 8667 of the General Code Does Not Apply to Corporations Formed Under the Act Commonly Referred to as the Non-Par Value Stock Act (Sections 8728-1 et seq. G. C.).

No. 2973—(Opinion Dated April 7, 1922.)

Hon. William H. Phipps, Director of Commerce, Columbus, Ohio:

Dear Sir—Your letter of recent date inquiring whether or not Section 8667 of the General Code applies to corporations formed under the act commonly referred to as the “non-par value stock act,” was duly received.

The non-par value stock act was originally enacted by the Legislature of this State in 1919, by an act entitled “An Act to authorize the formation and reorganization of corporations with common stock without par value.” It has been twice amended, and the act complete, and now in force, will be found in 108 O. L., pt. 1, p. 507; 108 O. L., pt. 2, p. 1287; and 109 O. L., p. 273; Sections 8728-1 et seq., G. C.

The act makes provision for the formation of corporations for profit with a peculiar class of stock, which, prior to its enactment, had been unknown to or recognized by the statutory law of the State applicable to corporations for profit, to-wit, common shares without par value. Up to that time, the Legislature, in dealing with domestic corporations for profit, had only authorized or recognized par value shares, and every section of our statutory law, commonly referred to as the “general corporation law,” applicable to such corporations, necessarily referred to those having a capital stock represented by par value shares.

The general corporation law, now designated as Sections 8523 et seq. of the general code, was enacted in code form several years prior to the enactment of the non-par value stock act, and its several sections have continued in force, either in original or amended form, up to the present time. Among its sections of long standing is Section 8667, which imposes a limitation upon the amount of preferred stock that may be outstanding. The section reads as follows:

“If a corporation be organized for profit, it must have a capital stock, which may consist of common and preferred, or

common only; but at no time shall the amount of preferred stock at par value exceed two-thirds of the actual capital paid in in cash or property."

In view of the history of the laws under consideration, briefly outlined above, the conclusion is irresistible that Section 8667 was enacted with sole reference to corporations having par value shares, and that was its only possible application prior to the enactment of the non-par value stock act. While the non-par value act (either for the purpose of inclusion or exclusion, as will be disclosed later on), has made specific reference to certain sections of the general corporation law, no such reference has been made to Section 8667, and the question now arises whether we are reasonably justified in incorporating that section into the non-par value stock act via the route of construction? In the consideration of this question the rule of reason should be applied, and unless necessarily required in order to give effect to the legislative intent as found in the non-par value act itself, an earlier and long existing provision of the general corporation law should not be employed, if the effect would be to nullify or seriously impair the express and unambiguous provisions of the act, or to create a situation out of harmony with the general and fundamental theory of the act.

After careful consideration the conclusion has been reached that Section 8667 does not apply, and following the established practice of this department, we will now proceed to state the reasons for our conclusion.

On account of the length of the non-par value stock act it will not be quoted in this opinion, but a summary of the act sufficient to disclose its special character and the inapplicability of particular sections of the general corporation law, will be made. Other provisions of the act having more or less bearing on the question under consideration might be referred to, but they are of the same general character as those which are noted, and hence will not be specially referred to herein.

(1) Section 1 of the Act. This section first deals with the articles of incorporation and authorized capital stock, and provides for the formation of a company with a capital stock consisting solely of non-par value common shares, or of both non-par value common shares and par value preferred shares. The par value of the preferred shares, if any, cannot exceed \$100 each. No provision is made for a capital stock made up in whole or in part of par value

common shares or non-par value preferred shares. In the respects just mentioned, there is a material departure from the general corporation law.

The section also requires that the amount of common capital with which the corporation will begin to carry on business, which shall not be less than \$500, shall also be stated in the articles. This is a provision which is not found in the general corporation law, but is special or peculiar to companies formed under the non-par value stock act.

After enumerating the different statements to be made in the article, the section then expressly provides that such statements shall be in lieu of any statements required by law to be stated in the articles as to the amount of the capital stock, or as to the number of shares into which the same is to be divided, or as to the par value of such shares, thus expressly excluding the application of other laws to the subjects mentioned.

The section next deals with the subject of the filing fees to be paid to the secretary of state, and provides a rule or plan for computing the fees different from that applicable to companies formed under the general corporation law.

Next in the section occurs a provision placing a limitation on the number of outstanding shares. This provision is peculiar to companies formed under the act, and reads as follows:

"At no time shall the number of shares of preferred stock outstanding be more than two-thirds of the total number of shares, common and preferred, outstanding."

It will be observed that the limitation imposed goes to the number of shares of preferred stock outstanding, and not to their amount at par value, as does Section 8667; and while its subject is outstanding preferred stock, it is, in the respect just mentioned, a departure from Section 8667. In other words, it appears to be a special provision on the subject of outstanding preferred stock.

The section also authorizes the division of the non-par value common shares into classes, with such designations and voting powers, or restrictions or qualifications thereof, as may be stated in the article. In connection with this authorization is found another special provision respecting the certificates representing the non-par common stock. Both provisions are peculiar to companies formed under the non-par value stock act.

The section next deals with the issue and sale of the company's

shares, and the consideration which the company may receive therefor. The provisions of the section on this subject reads as follows:

"Such corporation may receive subscriptions for, and issue and sell its preferred shares, as authorized by law. At the time of opening books of subscription to the capital stock, as required by law, subscriptions may be received for the common shares, without nominal or par value, for such consideration as may be decided upon by a majority of the incorporators at the time of ordering books to be opened for subscription; thereafter, subject to the provisions of section 8699, the corporation may issue and sell its said common shares, from time to time, for such consideration as shall be the fair value of such shares, as fixed by its board of directors, or for such consideration as shall be consented to in writing by the holders of all the outstanding shares of common stock, or for such consideration as shall be fixed by the vote of a majority in number of the outstanding common shares at a meeting called for that purpose in such manner as shall be prescribed by the code of regulations. Nothing herein shall prevent a corporation from paying dividends, subject to the limitations of this act, payable in common stock of the company at a price fixed by the board of directors instead of in cash or property. Any and all shares issued as permitted by this section shall be deemed fully paid and non-assessable and the holder of such shares shall not be liable to the corporation or to its creditors in respect thereof."

Disregarding for the moment that part of the above quotation relating to the payment of dividends, the context indicates that the subject of the provision is the "consideration" to be received by the company when disposing of its shares. This appears, so far as the preferred shares are concerned, from the introductory part of the quotation which refers to subscriptions to its preferred shares, and the last sentence which provides that all shares issued shall be deemed fully paid and non-assessable, etc.; and, with respect to the non-par value common shares, it is made to appear from all of the provisions of the quotation, excluding only the first sentence and the one respecting the payment of dividends. No place in the quoted provision is there to be found any clear or express limitation on the amount of preferred stock that may be sold, or on the number of common shares that may be sold.

It will also be noticed that the quoted provision makes specific reference to Section 8699. That section is one of the sections of the general corporation law. In the absence of such reference, the fair inference to be drawn would be that Section 8699 G. C. did not apply, and we also feel warranted in saying that the fact that it is

specifically referred to amounts to a legislative recognition that it would not have been applicable had it not been incorporated into the act by apt words of reference. We also believe it not illogical or unreasonable to state in this connection that if the Legislature had intended Section 8667 to apply to the issue and sale of the preferred shares, by non-par value stock companies, it would have specifically referred to such section, as it did in the respect just pointed out. In any event, considering the act as a whole, we do not feel justified in holding that the clause, "as authorized by law," which appears in the quotation, refers to Section 8667, or to any other section of the general corporation law which would have the effect of placing a material restraint or limitation upon the exercise of the authority expressly conferred by the act to sell the common shares for such consideration as may be fixed by the incorporators, stockholders, or directors. If Section 8667 is held to be applicable, by reason of that clause, then non-par value stock companies would be compelled to arrange their capital stock, and issue and sell it, to meet the requirements of the general corporation law, instead of the non-par value stock act under which they are incorporated and organized, and in many cases the company would be compelled to secure more than par for their preferred shares, or, in case par or less should be secured, \$100 or more for their non-par common shares. For example, and by way of illustration: Suppose a non-par corporation with an authorized capital stock consisting of 1000 of non-par common shares, and 2000 shares of preferred of the par value of \$100 each, and that the company has received subscriptions for all of the preferred shares at par, making a total of \$200,000. If Section 8667 applies, then the company before it can have \$200,000 of preferred stock outstanding must have a paid in capital of \$300,000, and in order to secure that amount it would be compelled to get not less than \$100 per share for its common shares, notwithstanding the act expressly and in unambiguous terms authorizes the company to sell its common shares for such consideration as may be fixed by the incorporators, stockholders, or directors, as the case may be. That would also be requiring a minimum of \$100,000 of common capital assets, whereas, the act itself fixes the minimum at \$500.

(2) Section 2 of the Act. In this section the Legislature recognizes the inapplicability of one of the sections of the general corporation law to the new class of corporations which it is dealing with, to-wit, Section 8633, and makes special provision in lieu

thereof; and this is immediately followed by a provision suggestive of legislative recognition of the inapplicability of particular sections of the general corporation law unless incorporated into the act by reference, viz., the provision that as soon as the certificate of subscription and payment specially provided for has been filed with the secretary of state, the stockholders shall then proceed "as provided in Sections 8635 and 8636,"—both of which are sections of the general corporation law.

As already indicated, the first section of the non-par value stock act also provides that there shall be stated in the articles of incorporation the amount of common capital with which the corporation will begin to carry on business, which shall not be less than \$500, and Section 2 of the act, now under discussion, contains the provision that the corporation shall not begin to carry on business, or incur any debts, until the amount of common capital so stated shall have been fully paid to the corporation in money or in property taken at its actual value, etc.

Attention is now directed to another provision of Section 2 of the act which is also suggesting of general legislative recognition of the inapplicability of particular sections of the general corporation law to non-par value stock companies, which is substantially a repetition of the language used in Section 8624 of the general corporation law, to-wit, the provision that "No such corporation shall declare or pay any dividend except from surplus profits arising from its business." The section also contains a further provision paralleling another section of the general corporation law, to-wit, Sec-8728, imposing a liability upon directors for wrongfully paying dividends, etc.

(3) Section 4 of the Act. Another provision of the act recognizing the general inapplicability of particular sections of the general corporation law, unless made so by the act itself, is the one authorizing non-par value stock companies to increase or reduce their capital stock, and to amend their articles of incorporation, in the manner provided for by Sections 8698, 8699, 8719 to 8723, inclusive, of the general corporation law.

(4) Section 5 of the Act. This section may be referred to as supporting the proposition that non-par value stock companies are not necessarily subject to all of the provisions of the general corporation law, since it expressly provides a plan whereby "any corporation for profit heretofore or hereafter organized under the

general incorporation laws of this State" may be reorganized or converted into a non-par value stock company, whereupon, as further provided by the section, the reorganized company and its officers, directors and stockholders shall acquire and enjoy all of the rights, privileges, powers and exemptions, and become subject to all of the liabilities and obligations imposed by the new act. Companies desiring to take advantage of the act are required to file a certificate of reorganization with the secretary of state, setting forth the history of the company and its proposed capital stock structure, and the section also expressly provides that the number of shares to be issued by the company may be either less than, or equal to, or in excess of the number into which its capital stock was previously divided, etc.

Generally speaking, the non-par value stock act appears to be complete in itself on the specific subjects to which it applies, and when the Legislature enacts a special law, then to the extent that any particular subject is contained therein, the provisions of that law are deemed to be exclusive of general statutes, for the presumption is that a law on a specific subject is enacted for the purpose of making a change in the general law.

The conclusion at which we have arrived is not, as already indicated, in conflict with that provision of Section 1 of the act which provides that non-par value stock companies may receive subscriptions for, and issue and sell their preferred shares "as authorized by law." In addition to the reasons already given in support of the conclusion, and as was said in *Penrose v. Ventnore*, 80 N. J. L., pp. 547, 549, "We think that the expression 'authorized by law' does not necessarily mean expressly authorized by statute." See also definitions of the word "law," in 2 Bouvier's Law Dictionary. The meaning of the clause, "authorized by law," in a particular instance, the same as any clause or word that is susceptible of two or more meanings, must be determined from the context; and the context, as already pointed out, excludes the application of any general clause in the act itself, or of any general statute, which would destroy or materially impair the power clearly and specifically conferred upon non-par value stock companies to sell their common shares for such consideration as may be fixed by the incorporators, stockholders, or directors. Just what "law" is referred to does not clearly appear, but it does not necessarily exclude the so-called common law, nor does it necessarily include any particular statutory law, and surely it does not include any law, statutory or otherwise, that

would conflict or be inconsistent with the clear and positive provisions of the act of which it forms a part. Perhaps the best general definition of the clause would be the one just indicated, viz., that it is a clause which refers to laws not in conflict with the other provisions of the act of which it is a part; which is but stating in different form the well known and universally accepted rule of statutory construction that the meaning of words or clauses which are susceptible of two or more meanings must be determined from the context, for, as is well stated in 1 Bouvier's Law Dictionary, p. 654, "It is a general principle of legal interpretation that a passage or phrase is not to be understood absolutely as if it stood by itself, but is to be read in the light of the context, i. e., in its connection with the general composition of the instrument."

For the reasons above stated, we feel confirmed in the view already expressed that Section 8667 of the General Code does not apply to corporations formed under the non-par value stock act, and you are so advised.

In answer to your further question as to what rules or regulations your department may adopt in case Section 8667 is held to be inapplicable, we can only say at this time that no rule or regulation in conflict with the provisions of the act should be adopted or enforced. If the act should prove to be detrimental to the public welfare, or if it should, in your opinion, be amended in order to place certain limitations or restraints upon the exercise of the powers or authority which it now confers, the matter can be called to the attention of the General Assembly, which is the only legally constituted body that can repeal or amend it. If you have any particular rule or regulation in mind, we will be pleased to confer with you concerning it.

SUPREME COURT

SYLLABI OF REPORTED CASES

No. 16895—Wilson & Co. v. The M. Werk Co. Error to the Court of Appeals of Franklin County.
Matthias, J.

1. Where there is a breach of warranty by the seller the buyer may exercise his option to rescind the contract, and, if the goods have been received, return them or offer to return them to the seller and recover the price or any part thereof which has been paid.

2. When the buyer is entitled to rescind the sale and offers to return the goods in exchange for the amount paid therefor, which is refused by the seller, a cause of action immediately accrues in favor of the buyer for the purchase price or the portion thereof theretofore paid by him.

3. If the seller refuses to accept the offer to return the goods, the buyer may thereafter proceed to sell the same to satisfy his lien thereon for the repayment of so much of the purchase price as he has paid. In making such sale he is required to exercise reasonable care and judgment; but he may sell either at public or private sale.

4. Where a buyer of a car of grease stearine is entitled to rescind the sale of same because of a breach of warranty in the quality thereof, and the seller refuses to accept a return of such product and repay the purchase price, all of which had been paid upon delivery of the bill of lading, and the buyer exercises due diligence in endeavoring to procure offers therefor, soliciting bids from large local consumers as well as from brokers dealing in such product, and informs the seller of the best bid made, and requests a bid from such seller, to which request there is no response, and the buyer thereafter buys it himself at a price in excess of that offered by any other, and thereafter seeks to recover from the seller the difference between the amount realized upon such sale and the price paid the seller, his recovery may not be defeated merely because of his own purchase at the resale of such product, in the absence of any

claim that such resale was for less than the market value thereof, where it appears that there has been no fraud and no unfairness manifested and the defendant at no time objected to or repudiated such sale or offered to satisfy the lien of plaintiff under the statute.

Judgment affirmed.

Marshall, C. J., Johnson, Wanamaker, and Jones, JJ., concur. Robinson, J., concurs propositions 1, 2 and 3 of the syllabus.

No. 17037—Nettie Poe Ketcham v. Frank F. Miller and Matthew R. Williams. Error to the Court of Appeals of Lucas county.
Robinson, J.

1. Where a petition avers the execution of a contract, avers the value of the contract to the petitioner, avers the breach thereof by the defendant, avers the damage to be in a sum equal to the value of the contract, the gravamen of the complaint is the breach of the contract, and the action sounds in contract, and the averment that the breach was unlawful, wilful, wanton and malicious does not change the action from one *ex contractu* to one *ex delicto*.

2. Punitive damages are not recoverable in an action for breach of contract.

3. Where in the trial of a case all parties have rested it is within the sound discretion of the trial court whether he will permit either party to reopen the case and introduce further evidence.

4. Where the plaintiff at the close of his case in chief has rested, and the defendant without introducing any evidence has rested, and the plaintiff has been permitted by the court in the exercise of his discretion to reopen his case and introduce further evidence, the case is also reopened for the defendant for all purposes.

Judgment affirmed.

Marshall, C. J., Johnson, Hough, Wanamaker, and Matthias, JJ., concur. Jones, J., concurs in the syllabus but favors judgment for plaintiff in error.

No. 17071—Herschel V. O'Day et al. v. Patrick J. Shouvin. Error to the Court of Appeals of Clark county. Jones, J.

1. The maxim, *sic utere tuo ut, in not a hard and fast rule applied, under all circumstances, to the use of property by adjoining proprietors. If the business is lawful and the facilities employed are not inherently noxious or dangerous but are operated by means of modern appliances in the usual and ordinary method, such business is not a nuisance per se, nor is its owner liable as an insurer.*

2. A petition alleged that the defendant was the owner of a plant employing a cupola for its operation; that the cupola was 218 feet distant from plaintiff's dwelling house; that in its operation sparks escaped from the cupola and, carried by wind blowing in the direction of plaintiff's dwelling, destroyed it. Held: In the absence of allegations of negligence, the petition was demurrable.

3. In order to recover, plaintiff must plead and prove negligence. Evidence offered by the defendant, that the cupola used was of improved and modern type and that it was not the custom to use spark arresters on that type of cupola in the various foundries, is admissible on the issue of negligence.

Judgment affirmed.

Johnson, Robinson and Matthias, JJ., concur. Hough, J., concurs in the judgment. Marshall, C. J., and Wanamaker J., dissent.

No. 17206—Joseph Rawson et al v. Albert T. Brown. Certified by the Court of Appeals of Hamilton county. Johnson, J.

1. A permanent leasehold estate renewable forever is not a fee simple although under the Ohio statute it has many of the incidents thereof. The fee simple remains in the lessor, his heirs, devisees or assigns.

2. Where possession of real estate has been given to a lessee under the provisions of a lease, the lessee holds for the lessor; the possession of the former is the possession of the latter.

3. The heirs and devisees of a lessor who are entitled to the rents accruing from time to time under a lease for 99 years renewable forever, are entitled to partition under the

statutes of Ohio. An option to purchase after 25 years which is included in the lease is no obstacle to that right until the option is exercised.

Judgment affirmed.

Marshall, C. J., Hough, Wanamaker, Robinson and Matthias, JJ., concur. Jones, J., took no part in the consideration or decision of the case.

No. 17209—The State, ex rel. F. M. Leaverton et al., v. J. S. Karna, County Auditor, et al. Error to the Court of Appeals of Highland county.

Marshall, C. J.

1. Section 9880-1, General Code, which provides for furnishing aid to independent agricultural societies, makes no requirement as to the form and manner of incorporating such societies. If organized by the required number of qualified persons, and exhibitions are held, and the laws of Ohio and the rules of the state board of agriculture have been complied with and properly certified by the state board as required by that section, the right of the independent society to such aid is complete.

2. The aid provided by Section 9880-1, General Code, is not for the purpose of furnishing financial assistance to a private enterprise, nor for lending the credit of the state thereto, but, on the contrary, is in aid of a public institution designed for public instruction, the advancement of learning and the cause of agriculture, and is not in violation of Sections 4 and 6, Article VIII of the Ohio Constitution.

Judgment reversed.

Johnson, Hough, Wanamaker, Robinson and Matthias, JJ., concur. Jones, J., dissents for the reason that this was a corporation organized for profit.

No. 17057—Mahoning & Shenango Railway & Light Company v. Sally Leedy. Error to the Court of Appeals of Mahoning county.

Robinson, J.

1. Where a street railway company operating its cars upon public streets has itself created a sudden situation of danger, it is the duty of such street railway company before discharging a passenger into such dangerous situation by itself created

to either remove the dangerous situation or warn the passengers of its existence.

2. Where the dangerous situation created by the carrier is alike known to the carrier and the passenger, the passenger is bound to exercise ordinary care to prevent injury to herself, but where the carrier through its servant by discourteous and impatient conduct and language confuses and disturbs the passenger so as to interfere with the deliberate exercise of her faculties, it is a question for the jury whether her failure to look before stepping upon the step of the car or before stepping upon the ground from the step amounted under the circumstances to a failure to exercise or-

dinary care.

3. When the carrier, a street railway company, has carried its passenger in safety and discharged her in safety on the street and the danger was not there at that time, the carrier has discharged its obligation to the passenger, and a charge to the jury which may fairly be construed to authorize a recovery for an injury received from an independent source, subsequent to the discharge of the passenger in a place of safety, is erroneous and prejudicial.

Judgment reversed.

Marshall, C. J., Jones and Matthias, JJ., concur.

Wanamaker, J., dissents.

SECRETARY OF STATE

NEW INCORPORATIONS

The Auto Paint, Trim & Repair Co., Dayton, \$10,000. H. A. Riedyk, I. F. Craig, Isaac Warner, H. G. Kemper, I. I. Hauer.

The Lee Court Realty Co., Cincinnati, \$75,000. Lester A. Jaffe, Magdalen Steinert, August F. Driemeyer, Mabel V. Madden, Nathan I. Fleischer.

The Indian Oil Products Co., Cleveland, \$10,000. John Roski, Henry DuLaurence, Marion Stanton, Zofia Markowska, J. Harold Read.

The Muskingum Bond & Mortgage Co., Zanesville, \$500. H. R. Bumbaugh, H. B. Hopper, M. C. Darst, Joseph Schmidt, J. W. Crosby.

The Healy Furniture & Rug Co., Columbus, \$50,000. Russel Joseph, Max J. Goodman, Clara Goodman, Rose H. Goodman, Adele Joseph.

The Capitol Land & Building Co., Columbus, \$10,000. J. Shearer, Wm. R. Draper, James R. Spellman, W. H. Fledderjohann, S. A. Hoskins.

The Mayfield Construction Co., Cleveland, \$10,000. Charles Son, Domenico Faranacci, Pompilio Sabette, Ernesto Bertoni, John E. DiTirro.

The Potter-Gager Co., Columbus, \$6,000. Joseph D. Potter, Helen Gager Brown, John B. Gager, Webb I. Vorys, Eloise Potter.

The Pallas Printing Co., Lorain, \$50,000. A. B. Koller, Andrew Koller, Steven Chonka, Andrew Simon, Joseph Rethy.

The American Light Co., Zanesville, \$75,000. Adolph A. Goldenberg, A. Goldenberg, S. Goldstein, W. A. Lorimer, P. H. Tannehill.

The Oberling Motor Sales Co., Cleveland, \$10,000. E. C. Wolfe, Gilbert Morgan, H. L. Deibel, L. M. Lewell, A. J. Pejsa.

The Fred Epple Co., Cleveland, \$50,000. Fred Epple, Kate Epple, Winter F. Brown, Fred W. Greer, Josephine Epple.

The Guy Mative Co., Cleveland, \$10,000. Edgar S. Byers, Carl D. Friebolin, Ada E. Gillard, Ida Hausman, Ethel J. Hogue.

The Beulah Realty Co., Cleveland, \$7,000. Wm. E. Tousley, W. B. Stewart, Walker H. Nye, Orville Smith, Charles Follett.

The Murdock Dishwashing Machinery Co., Marion, \$250,000. Parmly H. Ryder, Hugh A. McKinnon, Elmer B. Fidler, Fred B. Scherff.

The Ohio State Building Co., Beechwood, \$1250. John R. Watson, Robb O. Bartholomew, L. T. Goodwin, Samuel R. Tate, Samuel Wigston.

The J. H. Wiener Motor Co., Akron, \$25,000. J. Harry Wiener, A. H. Commins, Edwin W. Brouse, Amos H. Englebeck, C. Blake McDowell.

The Book, Art & Music Co., Canton, \$10,000. G. H. Sanborn, R. E. Bradley, Walter D. Schrantz, Harry G. Devaux, Harry C. Gardner.

The J. V. Koudela Co., Cleveland, \$25,000. J. V. Koudela, O. C. Koudela, Joseph Koudela, Tillie Koudela, Anna Koudela.

The Dayton Wireless Shop Co., Dayton, \$10,000. Melvin Lehman, Robert G. Tufts, Harry F. Rugey, Ben Lehman, Sidney G. Kusworm.

The Ross Construction Co., Columbus, \$10,000. H. B. Ross, E. E. Ross, W. L. Ohmert, C. E. Smith, M. M. Smith.

The Glaser Cut Rate Co., Canton, \$10,000. Jacob A. Glaser, Karl A. Feist, Caroline Powell, Charles S. Weintraub, Frank Katsopoulos.

The Eclipse Sales Co., Dayton, \$10,000. Charles F. Budroe, T. H. Barlow, Laura Swope, A. C. Shelton, N. F. Nolan.

The Tate Habelman Co., Cleveland, \$10,000. Sidney Tate, Frances C. Tate, Dora M. Tate, Katherine A. Habelman, Clarence A. Habelman.

The Safety Cross Drug Co., Cleveland, \$50,000. Meyer Katz, Bessie Katz, Nettie Katz, Rose Katz, Isidore Katz.

The Wendell P. Brown Co., Cleveland, \$10,000. Wendell P. Brown, Arthur D. Baldwin, John MacGregor, Jr., Philip R. White, Carl A. Hope.

The Persons Printing Co., Cleveland, \$10,000. H. B. Howells, L. L. Gahn, Claude W. Shimmom, E. W. Riemenschneider, H. Liptak.

The Landlords Renting and Managing Co., Cleveland, \$10,000. Joseph Nuccio, G. E. Romano, Bertha Kramer, Alfred Safran, Elizabeth Holstein.

The Frankfort Improvement Co., Cleveland, \$500. B. D. Gordon, A. J. Schanfarber, C. R. Berne, E. L. Mueller, E. J. Novy.

The Condon-Gardner Co., Akron, \$10,000. Mark A. Gardner, Ora S. Gardner, Vira B. Condon, Walter J. Condon, R. J. Smyers.

The Glanoidal Medicine Co., Cincinnati, \$10,000. H. B. Knight, C. Fehry, James O. Lewis, Miller W. Renner, John M. Renner.

The David Holding Co., Cleveland, \$500. Josiah Kirby, William L. David, Edw. O. Peck, L. B. LeBel, Geo. H. Eichelberger.

The Oliver Hughes Co., Cleveland, \$250,000. H. M. Dwyer, L. A. O'Neil, Charles P. Ross, W. L. Spring, A. A. Sayre.

The Cuyahoga Asphalt & Paving Co., Cleveland, \$100,000. Charles F. Rieley, Oliver R. Rieley, Robert L. Beck, C. W. Tyler, J. W. Little.

The Farmington Light and Power Co., W. Farmington, \$25,000. J. H. Elwell, Orris Newcomb, F. S. Hart, C. E. Stevens, H. G. Chapel.

The Lind Oil & Gas Co., Zanesville, \$20,000. Ben E. Lind, Ray P. Craig, Jacob Lind, Sam E. Lind, Benj. R. Smith, Karl Sturz, Al. C. White.

The Di-Brenle Mfg. Co., Cleveland, \$100,000. Francis V. Brady, George Brenner, Charles Mellen, Harold F. Warren, C. E. Dibble, Dr. T. W. Ranson.

The Roth & Co., Middletown, \$25,000. Curtis Focht, John Roth, Nell Fitzgerald, A. J. Wehr, A. A. Burkhardt.

The Academy of Health & Applied Therapeutics Co., Toledo, \$10,000. Edward J. Schreiber, Anna M. Schreiber, L. Schwanzl, M. Bushbaum, Wm. Rothert.

The Stanley H. Andrews Co., Cleveland Heights, \$10,000. Stanley H. Andrews, Samuel Horwitz, H. P. Ord, M. Mergner, E. R. Walters.

The Clock-Duval Co., Cleveland, \$5,000. Morley T. Clock, Lester G. DuVal, Betty R. Abramson, Edw. C. Sargent, M. A. Fraser.

The Kotex Paint & Varnish Co., Cleveland, \$40,000. Frederick L. Hole, Ralph W. Jeremiah, J. Rogers Jewitt, M. E. Korabek, D. M. Miller.

The Union Svgs. Bank, Youngstown, \$50,000. James M. Modarelli, G. Silvestri, Philip F. Carosella, Fred Rossi, Antonio Mastrantcino, F. P. Mastroianni.

The C. G. Spring Co., Cleveland, \$10,000. Christian Girl, Harold H. Burton, Archie E. Homan, James J. Laughlin, Jr., Donald W. Kling.

The Cleveland Deflex Co., Cleveland, \$200,000. Roscoe M. Ewing, George Eddy, J. W. Patterson, Charles Eddy, B. F. Meining.

The F. E. Welsh Contractor Co., Cleveland, \$500. Charles S. Wachner, M. G. Egan, James P. Hunter, James W. Waud, Howard M. Crow.

The M. and O. Rubber Co., Salem, \$500. Mary H. Meier, W. C. Owen, J. C. Meek, Elden Meek, J. A. Meek.

The Howard Transfer Co., Akron, \$10,000. Harmon H. Miller, Arthur Fenton, Martin H. Fenton, Wm. A. Kelly, C. L. Dinsmore.

The Kenton Royal Theatre Co., Kenton, \$8,000. Peter W. Breidenbach, Edwin Rose, James W. Reddick, John E. Deardorf, Nellie Rose.

The Luggage Shoppe Co., Youngstown, \$25,000. S. B. Schaevitz, Ida Becker, Joseph Manus, Murray A. Nadler, A. M. Pierson.

The Yellow Cab Co., Cleveland, \$10,000. A. F. Waite, L. J. Lester, W. L. Smith, J. Rogers Jewitt, R. W. Jeremiah.

The Gear and Parts Co., Akron, \$2400. Henry Cossell, Albert S. Meeker, Lena L. Meeker, Francis B. Cossel, J. V. O'Neil.

The Birckhead Park Co., Toledo, \$500. H. W. Ashley, James S. Martin, James W. Harbaugh, Wayne R. Peppert, William J. Fritzsche.

The Coin Clock Co., Cleveland, \$500. Ira H. Crum, Herman R. Tingley, Mildred M. Giffin, G. M. Armbruster, Stewart A. Hoover.

The Paine & Williams Co., Cleveland, \$50,000. E. E. Paine, F. B. Williams, Samuel Doerfler, J. M. Namen, S. J. Kornhauser.

The First Svgs. & Loan Co., Athens, \$10,000. W. B. Lawrence, E. R. Walker, P. B. Lawrence, C. L. Bean, C. M. Copeland.

The G. S. T. Co., Beachwood, (Cuyahoga Cc.), \$500. Roscoe M. Ewing, James L. Lind, O. P. Moon, M. W. Vickery, E. L. Heasley.

The Niles Pub. Co., Niles, \$30,000. F. L. Bixler, R. B. Crawford, P. F. Bixler, Sol Lowendorf, M. E. McGarry.

The Tire & Replacement Co., Cincinnati, \$100,000. Jos. A. Shaffer, Roger L. Neff, Jr., J. E. Maloney, Ralph L. Hinds, C. J. Krouse.

The Rndell Bldg. & Constr. Co., Cleveland, \$10,000. M. W. Bruml, H. L. Taylor, Jacob H. Eglin, Samuel Milder, J. W. Little.

The Mutual Home & Savgs. Ass'n, Athens, \$1,000,000. Thomas N. Hoover, J. J. Schmdit, C. H. Horn, N. J. Wolfe, Field Scott.

The Gould-Maybach Paving Co., Cleveland, \$50,000. Chas. Niman, W. T. Holliday, Chas. M. Buss, A. B. Oakes, Maurice F. Hanning.

The Lake Placentia Park Co., N. Georgetown, \$10,000. W. L. Crist, E. H. Greeneisen, E. C. Wang, Ed. Reichenbach, Frank Saffell, L. E. Sanor.

The Recto Sales Co., Cincinnati, \$15,000. S. S. Liston, Eva W. Wilson, Frank H. Wilson, Clara B. Backscheider, N. H. Backscheider.

The Dr. Smith Disinfectant Co., Cleveland, \$20,000. Geo. E. Johnson, Herman Johnson, Thomas R. Cuddy, Louis S. Levine, Ray R. Smith.

The Stone Bros. & Sherwin Co., Cleveland, \$10,000. Edgar A. Hahn, Irwin N. Loeser, Monroe A. Loeser, H. Stewig, I. L. Nichols.

The P. J. Rogan Hotel Co., Wellston, \$40,000. Pat J. Rogan, Delia Rogan, H. S. Willard, Jr., H. A. Goddard, Geo. C. Sellers.

The Famous Radio Voices Co., Cleveland, \$500. R. W. Wright, H. Dobrin, E. Zalad, Frank S. Taylor, W. H. Hasselman.

The United Lunch Co., Cleveland, \$500. C. S. Clark, M. G. Egan, Howard M. Crow, Chas. B. Wachner, James P. Hunter.

The Cleveland Vacuum Tube Co., Cleveland, \$10,000. Wm. B. Woods, C. A. Spielman, James Benner, Anna L. Becker, O. V. Maurer.

The Federal Clothing Co., Youngstown, \$20,000. Daniel W. Steiner, Edw. W. Frey, Fred J. Warnock, Florence C. Frey, Cora M. Steiner.

The Radioart Supply Co., Akron, \$25,000. Donald A. Hoffman, K. P. Kahlke, Carl Looker, M. M. Maxcn, Edw. S. Sheck, E. M. Bloom.

The Citizens' Telephone Co., Eaton, \$50,000. Harry D. Silver, Silas Q. Buriff, Will E. Schlientz, C. A. Padack, J. H. Hart, B. G. Call, Walter Tyrrell.

The Permanent Coal and Supply Co., Cleveland, \$50,000. Will W. Wagner, Mary L. Wagener, Fred J. Ketcher, Myr. E. Ketcher, J. E. McCanna, Julia Henry McCanna.

The General Motor Transportation Co., Dayton, \$25,000. Peter J. Altherr, G. S. Murphy, Orville Mason, Morton Gray, Fred McCurdy.

The Cut Rate Tire Co., Canton, \$25,000. Rose Miller, I. Kruglick, Robert H. Everhard, F. B. Melchior, Wendell Herbruck.

The Drapery Shoppe Co., Columbus, \$30,000. B. E. Weilbacher, M. C. Weilbacher, W. M. Thackara, E. A. Thackara, Joseph P. Eagleson.

The Hawley Apartments Co., Cleveland, \$50,000. N. R. Cornsweet, Samuel B. Tilles, Louis B. Spanner, Louis H. Wieber, M. A. Klein.

The Rosen Garage Co., Cleveland, \$25,000. J. H. Kellogg, E. B. Freed, N. K. Door, S. C. Smith, T. M. Lavelle.

The Frankfort Garage Co., Cleveland, \$500. B. D. Gordon, C. R. Berne, E. L. Mueller, E. O. Peck, A. M. Nell.

The Jack V. Elliott Co., Cleveland, \$10,000. John V. Elliot, Lester E. France, Merle C. France, John Dicker, T. J. Rose.

Increases

The Old Trail's Garage & Service Co., Hebron, \$1,000 to \$30,000.

The Homestead Svgs. & Loan Co., Cleveland, \$50,000 to \$1,000,000.

The H. R. Blagg Co., Dayton, \$75,000 to \$150,000.

The Oakley Bldg. & Loan Co., Oakley, \$1,500,000 to \$2,000,000 (Hamilton Co.).

The Kelley Scooter Co., Cincinnati, \$10,000 to \$20,000.

The Eureka Milling & Supply Co., Sycamore, from \$40,000 to \$80,000.

The Globe Register Co., Cincinnati, from \$300,000 to \$350,000.

The Reliance Svgs. & Loan Co., Cleveland, \$5,000,000 to \$10,000,000.

The Mt. Healty Svgs. & Loan Co., Mt. Pleasant, \$2,000,000 to \$3,000,000.

The Hilltop Mortgage Co., Columbus, from \$50,000 to \$80,000.

The Fundamental Loan & Building Co., Cincinnati, \$2,000,000 to \$3,000,000.

The Mar-Ge-Let Advertising Co., Cincinnati, \$10,000 to \$16,500.

Decrease

The M. J. Roche Constr. Co., Cincinnati, \$150,000 to \$100,000.

The Marietta Sand Co., Marietta, \$150,000 to \$10,000.

The Kurz-Kasch Co., Dayton, \$100,000 to \$62,500.

The Milburn Wagon Co., Toledo, \$1,285,000 to \$1,269,800.

PUBLIC UTILITIES COMMISSION

No. 2422—The Cleveland Brick and Clay Company, Complainant, vs. The Baltimore and Ohio Railroad Company, The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, Erie Railroad Company, The New York, Chicago and St. Louis Railroad Company, The New York Central Railroad Company, and The Wheeling and Lake Erie Railway Company, Defendants. Dismissed.

(Dated April 7, 1922.)

Complainant is a corporation engaged in the manufacture of vitrified paving block (or brick) and other kinds of brick, at Cleveland, Ohio. By complaint filed November 4, 1921, it alleges that rates of defendants,

“for transporting vitrified paving block and paving brick between points within the switching limits of the city of Cleveland, and rates applicable to said traffic between points in the State of Ohio * * * operate to cause an unlawful discrimination against traffic originating within said switching limits and destined to private sidings or team tracks within such limits, and in favor of traffic originating at points without the said switching limits, and destined to private sidings or team tracks within said switching limits.”

and

“That prior to and since October 20, 1921, the charges for the transportation of complainant's property, in carloads to private sidings and team tracks within the switching limits of Cleveland, Ohio, were and are as follows:

“(a) When for delivery to private sidings on Baltimore & Ohio Railroad on which line complainant is located, 42 cents per net ton.

“(b) When for delivery to team track on said line of Baltimore & Ohio Railroad, 56 cents per net ton.

“(c) When for delivery to private siding on connecting lines, 56 cents per net ton.

“(d) When for delivery to team track on connecting line the Baltimore & Ohio Railroad's charge of 42 cents per net ton to the junction of connecting railroad, plus the charge of 56 cents per net ton of connecting line from junction to team tracks, making a total through charge of 98 cents per net ton.”

and

“That since October 20, 1921, the rates for the transportation of vitrified paving block, or brick, in carloads, between points in the State of Ohio, have been the rates and charges in effect on August 25, 1920, prior to the forty per cent (40%) increase, decreased by ten (10) cents per ton, with minima the

- rates and charges which were in effect June 24, 1918, increased twenty-five percentum."

Complainant's plant is located on a private siding, connecting exclusively with the line of the B. & O. Railroad, within the switching limits of the city of Cleveland. Substantially all of its output is sold, shipped and used within the switching limits of the city of Cleveland. Home of complainant's product is delivered by truck. Its shipments of paving block to destinations within the switching limits of Cleveland are made by railroad to private sidings and team trucks of the carriers. The product is used for paving streets and is sold to contractors, F. O. B. point of delivery.

The intra-city movement here involved in transportation proper, as distinguished from switching by the Ohio Supreme Court. The rates complained of cover movements having both origin and destination within the switching limits of the city of Cleveland. The following is the Ohio Supreme Court's differentiation:

"We think that a switching service is rendered, within the meaning of Section 9000 (General Code) when a car is transferred from a side track, over the tracks of a railroad lying continuous thereto, to the line of the company which is to have what is termed the 'line-haul,' or from the line of the company which has had the line-haul, over the tracks of the company which delivers the freight, to the siding of the shipper. In such case the railroad company receiving the car from, or delivering it to the company having the line-haul would be limited in its charge to the amount fixed by statute for switching service. We have no such case here—according to our view the movement of the car in question from Fernbank to Doppes Switch was a transportation service for which a reasonable freight rate could be charged. The movement of the car in question by defendant-in-error (the delivering line in a two-line intra city movement) was not incidental to the shipment as a while but was part of it. Our holding is that the service rendered by the defendant in error was not a switching service, within the meaning of Section 9000, and therefore there could be no violation of its provisions."

(Matter in parentheses, ours.)

Doppes Sons Lumber Co. vs. C. N. O. & T. P. Ry. Co., 110 N. B., 640, 92 O. S.

The intra-city rates under attack, for various movements, are as shown above. Complainant stated that its chief competitors, located outside the Cleveland switching district, are as follows:

The Metropolitan Paving Brick Co., Canton, Ohio;
The Burton, Townsend Brick Co., Ashtabula, Ohio, and
The John Kline Brick Co., Wickliffe, Ohio.

Canton and Ashtabula are located respectively, 58 and 54 miles distant from Cleveland. The rate on paving block from each of these points to Cleveland is \$1.20 per ton when for delivery upon private sidings and team tracks of originating line, \$1.20 per ton when for private siding delivery on connecting lines, and \$1.62 per ton (less \$3.50 per car) when for team track delivery on connecting lines. The applicable rates on complainants shipments are as follows: 42c per ton for delivery on private siding of originating line, 56c per ton when for delivery on team track of originating line, 56c per ton when for delivery on private siding of connecting line, and 98c per ton when for team track delivery on connecting line. The operation of these rates certainly cannot be held to cause unlawful discrimination against complainant's traffic.

The record indicates that complainant's nearest competitor (located outside of the city of Cleveland) is The John Kline Brick Company. The Kline Company's plant is located at Wickliffe, Ohio, one and one-half miles outside the eastern boundary of the Cleveland switching limits on the rails of both the New York Central and Nickel Plate Railroads. Consequently this company can reach private sidings and team tracks of either the New York Central or Nickel Plate located within the Cleveland switching limits by a one-line haul.

Pursuant to the order of this Commission in Docket No. 2327, dated September 29, 1921, and effective October 20, 1921, the respondents reduced their intrastate rates on vitrified paving block to the basis in effect on August 25, 1920, less ten cents per ton, with minima, the rates in effect June 24, 1910, increased 25c. This reduction was applicable to shipments from the John Kline Company's plant into Cleveland, but did not apply to transportation movements (like complainant's) exclusively within switching limits.

Complainant contends that like reductions should have been made in the rates applicable to its intra-city traffic. This probably would be true had the intra-city rates been increased in the same manner as were the rates from points outside the switching limits. But the record shows, as will be indicated hereafter, that the rates were not subject to the same increases. The rates for the transportation paving block within the switching limits of the city of Cleveland were before this Commission in 1916 (Docket No. 861, *The Cleveland Shippers' Association vs. The B. & O. R. R. Co., et al.*). After an exhaustive investigation the Commission found that the rates were not unjust, unreasonable or unlawfully discriminatory, and by its order dated January 20, 1917, the complaint was

dismissed. Therefore for the purpose of this finding it will be unnecessary to analyze the rates prior to that time.

Referring to the intra-city rates herein complained of versus rates from Wickliffe to points within the Cleveland switching district, the effect of the various rate adjustments since January 20, 1917, is reflected by the following tables:

Cleveland Intra-City Rates on Paving Block.
(Rates shown are in cents per ton of 2000 lbs.)

From Complainant's plant when for delivery on	Rate in effect Jan. 20, 1917	As increased June 25, 1918, by G. O. 28	Present rate as increased Aug. 26, 1920, L. C. C. Ex Parte 74	Percentage increase present rate over rate in effect Jan. 20, 1917
Private siding, originating line	20	30	42	110
Team track, originating line	30	40	56	87
Private siding, connecting line	30	40	56	87
Team track, connecting line	50	70	98	96

Wickliffe to Cleveland Rates on Paving Block.
(Rates shown are in cents per ton of 2000 lbs.)

When for delivery on	Rates in effect on Jan. 20, 1917	As increased June 25, 1918, G. O. 28	As increased Aug 26, 1920, L. C. C. Ex Parte 74	Present rates as decreased Oct. 20, 1921, Order PUCO Docket 2827	Percentage increase present rates over rates in effect Jan. 20, 1917
Private siding, originating line	30	70	98	60	100
Team track, originating line	30	70	98	60	100
Private siding, connecting line	30	70	98	60	100 plus
Team track, per car					
connecting line	60	100	140	102	70

It will be noted that under General Order 28 of the Director General of Railroads (effective June 28, 1918), the rates from Wickliffe to Cleveland for all deliveries were increased 40c per ton, whereas, the intra-city rates, applicable to complainant's product, were increased but ten cents per ton for all deliveries except upon

connecting line team track and, in that instance, by but twenty cents per ton.

Had the Cleveland intra-city rates, which were in effect prior to General Order 23, been increased and then decreased in the same manner as were the rates from Wickliffe into Cleveland, the intra-city rates today applicable to complainant's product would be as follows:

For delivery on private siding of originating line.....	50c per ton
For delivery on team track of originating line.....	60c per ton
For delivery on private siding of connecting line.....	60c per ton
For delivery on team track of connecting line.....	80c per ton

Witness for complainant testified that 75% of complainant's intra-city shipments are consigned for delivery on private sidings and but 25% for team track delivery. Defendant's exhibit, Kline's No. 2 (as amended), shows that during the two-year period ending December 31, 1921, complainant shipped 857 cars brick destined to points within the Cleveland switching limits, of which 166 cars were for delivery upon tracks of originating carrier, and 671 cars for delivery upon tracks of connecting lines. Of the 671 cars delivered to connecting lines, 622 or 92.7% were consigned for private siding delivery and 49 or 7.3% for delivery upon team tracks.

The record shows that during the period October 26, 1921, to January 11, 1922, inclusive, the John Kline Company shipped into Cleveland 52 cars of brick via both New York Central and Nickel Plate Railroads, of which 49 were for private siding delivery upon the line of the originating carrier and three for team track delivery upon line of the originating carrier. On all these shipments, except the three cars for team track delivery, the complainant had a rate advantage of 4c per ton.

The Kline Company's plant is favorably located upon the tracks of two large trunk lines (both entering the city of Cleveland), thus permitting it to make a large number of deliveries within the Cleveland switching limits by a single-line haul. Complainant's plant is unfavorably situated upon only one railroad while a large majority of its shipments are destined to points, within the switching limits, requiring a two-line haul. It appears, however, even though unfavorably situated, that the complainant has a rate advantage over the John Kline Company in every case except where delivery is made upon a team track of either the New York Central or Nickel Plate Railroads. This Commission cannot change that part of the rate adjustment which is unfavorable to complainant merely for the purpose of offsetting its handicap due to a disadvantageous location.

We, therefore, find that the rates complained of are not unjust or unreasonable, nor are said rates unjustly or unlawfully discriminatory.

We further find that said complaint should be dismissed.

Order

This matter was submitted upon the pleadings, the evidence and exhibits, and the argument of counsel.

Upon consideration whereof, and being fully advised in the premises, and having this day made and filed in writing its findings of fact herein, the Commission further finds:

That the rates herein complained of are not unjust or unreasonable, nor are said rates unustly or unlawfully discriminatory, and

That said complaint should be dismissed.

It is, therefore,

Ordered, That said complaint be, and hereby the same is dismissed.

..

No. 2527—In the Matter of the Application of The Dayton Power and Light Company for Authority to Issue and Dispose of \$667,000 of Its First and Refunding Mortgage Five Per Cent Gold Bonds, Dated June 1, 1911. Prayer Granted.

(Dated April 13, 1922.)

This day, after full hearing, due notice of the time and place of which was given to all parties in interest, this matter came on for final consideration upon the application of The Dayton Power and Light Company, (a corporation duly organized and existing under and by virtue of the laws of the State of Ohio), asking the consent and authority of this Commission to issue and sell and, pending sale, to pledge its first and refunding mortgage, five per cent gold bonds, dated June 1st, 1911, due June 1st, 1941, of the principal sum of \$667,000, the proceeds arising from the sale/pledge thereof to be used to reimburse its treasury for and on account of the monies, not procured by the issue of stock, bonds, notes or other evidences of indebtedness, expended therefrom, within the period December 1st, 1920, to March 31st, 1921, inclusive, for the provision of additions and betterments (not heretofore authorized or authorized to be capitalized by order of this Commission) to its plant and facilities.

The Commission, being fully advised in the premises, finds from

the pleadings and exhibits filed herein, the testimony offered at the hearing, and its independent inquiry and investigation:

That, within the five years next preceding the date of the filing of the application herein and more specifically within the period December 1st, 1920, and March 31st, 1921, inclusive, the applicant actually expended from its treasury for the construction of additions, extensions and improvements to its plant and facilities, not heretofore capitalized nor authorized to be capitalized by order of this commission, the sum of \$501,729.14, none of which was obtained by the issue of stock, bonds, notes or other evidences of indebtedness;

That the issue of applicant's first and refunding mortgage, five per cent gold bonds of the principal sum of \$667,000.00 is reasonably required and the money to be procured thereby is necessary for the reimbursement of its treasury for the afore-said uncapitalized, capital expenditures therefrom;

That, the applicant now having bonds issued and outstanding in excess of its issued and outstanding capital stock, the issue and disposition of said first and refunding mortgage bonds in excess of applicant's issued and outstanding capital stock, and the expenditure of the proceeds thereof, as such excess, should be specifically consented to, authorized and approved, and

That, under the conditions now obtaining in the financial markets and surrounding the sale of securities, a reasonable price to be obtained from a sale of said first and refunding mortgage bonds will be seventy-five percentum of the principal amount thereof, and that, to now obtain the moneys hereinbefore found to be necessary for the applicant's lawful, capital purposes, it may be necessary to pledge said first and refunding mortgage bonds as collateral security for a shorter termed obligation, the conditions for the sale of which are more favorable.

and is satisfied that consent and authority for the issue and disposition of said first and refunding mortgage bonds of the principal sum of \$667,000 should be granted. It is, therefore,

Ordered, That said The Dayton Power and Light Company be, and hereby it is authorized to issue its first and refunding mortgage, five per cent gold bonds, dated June 1st, 1911, due June 1st, 1941, of the principal sum of six hundred and sixty-seven thousand dollars (\$667,000), and that said bonds be sold for the highest price obtainable, but not less than seventy-five (75) percentum of the principal sum thereof. It is further

Ordered, That any discount arising from a sale of said bonds for less than the principal sum thereof be amortized pursuant to the

rules and regulations heretofore prescribed by this Commission. It is further

Ordered, That, pending the sale of said bonds as hereinbefore provided, the same may be pledged as collateral security for loans, the principal amount whereof shall be the greatest sum negotiable but, in no event less than seventy-five percentum of the principal sum of said bonds deposited as collateral security therefor. It is further

Ordered, That the proceeds arising from the sale or pledge of said first and refunding mortgage bonds be devoted to and used for the following purpose, and no other, to wit:

The reimbursement of applicant's treasury for and on account of the sum of \$601,729.14 (not procured by the issue of stock, bonds, notes or other evidences of indebtedness), actually expended therefrom, within the period December 1st, 1920 to March 31st, 1921, both inclusive, for the provision of additions, extensions and improvements, not heretofore capitalized or authorized to be capitalized by order of this Commission, to its plant and facilities.

It is further

Ordered, That the issue and disposition of said first and refunding mortgage bonds in excess of applicant's issued and outstanding capital stock and the expenditure of the proceeds thereof, as such excess, as hereinbefore provided, be, and hereby they are specifically consented to, authorized and approved. It is further

Ordered, That the applicant make verified report to this Commission of the issue and disposition of said first and refunding mortgage bonds and the expenditure of the proceeds thereof pursuant to the terms and conditions of this order.



No. 2509—In the Matter of the Application of The Northern Ohio Traction and Light Company for Authority to Issue and Sell \$11,500,000 General and Refunding Mortgage Gold Bonds, Series A, Bearing Six Per Cent Interest. Prayer Granted.

(Dated March —, 1922.)

This day, after full hearing, this matter came on for consideration upon the application of The Northern Ohio Traction and Light Company (a corporation duly organized and existing under and by virtue of the laws of the State of Ohio), asking the consent and authority of this Commission to issue and sell eleven million, five hundred thousand dollars, principal sum, of general and refunding mort-

gage, Series A, six per cent gold bonds, to be issued under a general and refunding mortgage, to be executed by the applicant to the National City Bank of New York as Trustee, the proceeds arising from the sale of \$6,778,300, principal amount thereof, to be used:

To reimburse its treasury for uncapitalized, capital expenditures therefrom, as follows, to wit:

For additions, extensions and improvements to facilities between Jan. 1, and June 30, 1920....\$	176,328.74
For additions, extension and improvements to facilities between July 1 and Dec. 31, 1920.....	408,705.79
For additions, extension and improvements to facilities between Jan. 1 and Dec. 31, 1921.....	500,692.92
For the purchase of eighty-six interurban and city cars	1,410,093.10
To provide certain additions, extensions and improvements to facilities subsequent to Jan. 1, 1922, estimated to cost	455,804.00
To redeem and discharge, at 101, \$2,454,200.00 outstanding six year, seven per cent secured gold bonds, due June 1, 1926.....	2,478,742.00
To re-acquire at 94, \$1,225,000.00, outstanding first lien and refunding seven per cent mortgage bonds	1,151,500.00

and the proceeds arising from the sale of \$4,721,700, principal amount thereof, to be used:

To acquire, purchase and/or redeem alike principal amount of its seven year, six per cent secured gold bonds, due June first, 1926; also asking the consent and authority of this Commission to pledge, as collateral security under the said general and refunding mortgage, securing the aforesaid bonds, its first lien and refunding mortgage, five per cent gold bonds of the total principal sum of \$4,-872,000 authorized, by this Commission, to be issued in proceedings Nos. 1649, 1454, 1944, 1307 and 1944, \$3,208,500, principal sum, of which are now pledged as collateral security for said six year, seven percent secured gold bonds, which are to be redeemed and certain bank loans; and surrendering the authority, granted by the order made and entered in proceeding No. 1992, to issue and dispose of six year, seven per cent secured gold bonds in excess of the principal amount of \$2,537,000.

The Commission, being fully advised in the premises, finds:

That, within the five years next preceding the date of the filing of the application herein and specifically to and including the thirty-first day of December, 1921, the applicant actually expended from its treasury for the construction, completion, extension and improvement of its facilities, the sum of \$2,-

495,820.55, none of which was obtained or procured by the issue of stock, bonds, notes or other evidences of indebtedness:

That the applicant now has under contract or in contemplation, the provision, during the present calendar year, of certain additions, extensions and improvements to its facilities, the cost of which has been conservatively estimated at the sum of \$455,804.00;

That, of a total principal sum of \$4,277,000.00 six year, seven per cent secured gold bonds, authorized by the order of this commission in Proceeding No. 1992, the applicant now has outstanding, of such bonds, \$2,454,200.00, principal sum, which mature upon June 1st, 1926, and must on or before said date, be paid and discharged;

That, if said present outstanding six year, seven per cent secured gold bonds shall, at this time, be redeemed and discharged, said order in said Proceeding No. 1992, insofar as it consents to and authorizes the issue and disposition of said bonds in excess of the principal sum of \$2,537,000.00 (the total extent to which the authority granted by said order was exercised, and of which \$82,800.00 were, subsequently reacquired and cancelled) should now be revoked, rescinded and held for naught.

That the applicant now has issued and outstanding \$1,225,000.00 principal sum, of first lien and refunding mortgage, seven per cent bonds, which may be reacquired at a price of 94 percentum of the principal sum thereof, and the acquirement of which is desirable in the matter of reducing the interest charge thereon.

That the applicant has now issued and outstanding \$4,721,700.00 principal sum, of seven year, six per cent secured gold bonds, which mature in the year 1926 and must, on or before the maturity date thereof, be paid and discharged, or lawfully refunded;

That the issue of applicant's said general and refunding mortgage, Series A, six per cent gold bonds, dated March 1st, 1922, and maturing March 1st, 1947, of the principal sum of \$11,500,000.00, to be issued under a general and refunding mortgage, to be executed by applicant to the National City Bank of New York, as trustee is reasonably required and the money to be procured thereby, necessary for the reimbursement of applicant's treasury for the aforesaid uncanceled, capital expenditures therefrom; the construction, completion, extension and improvement of its facilities, and the payment and discharge or lawful refunding of the aforesaid indebtedness;

That, the applicant now having mortgage bonds issued and outstanding in excess of its issued and outstanding capital stock, the issue and disposition of the aforesaid general and refunding mortgage bonds in excess of applicant's issued and out-

standing capital stock, and the expenditure of the proceeds thereof as such excess should be specifically consented to, authorized and approved, and

That, the commission having heretofore consented to and authorized, in Proceedings Nos. 1307, 1454, 1649 and 1944, the issue and sale, and, pending sale, pledge as collateral security, of the applicant's first lien and refunding mortgage, five per cent gold bonds, Series A, of the total principal sum of \$4,872,000.00, authority should now be specifically granted for the pledge, as collateral security, of said bonds under said general and refunding mortgage,

and is satisfied that, as hereinbefore found to be reasonably required and necessary, the prayers of said application should be granted. It is, therefore,

Ordered, That, in so far as the same consents to and authorizes the issue and disposition, by The Northern Traction and Light Company, of six year, seven per cent secured gold bonds in excess of the principal sum of two million, five hundred and thirty-seven thousand dollars (\$2,537,000), the order, made and entered in proceeding No. 1992, be, and hereby the same is revoked, rescinded and held for naught. It is further

Ordered, That said The Northern Ohio Traction and Light Company be, and hereby it is authorized to issue its general and refunding mortgage, Series A, six per cent bonds dated March 1st, 1922, due March 1st, 1947, of the principal sum of eleven million, five hundred thousand dollars (\$11,500,000), to be issued under a general and refunding mortgage, to be executed by applicant to the National City Bank of New York, as trustee, and that said bonds be sold for the highest price obtainable, but not less than ninety (90) per centum of the principal sum thereof. It is further

Ordered, That any discount arising from a sale of said bonds for less than the principal sum thereof be authorized pursuant to the rules and regulations heretofore prescribed by this Commission. It is further

Ordered, That the issue and disposition of said bonds in excess of applicant's issued and outstanding capital stock, and the expenditure of the proceeds thereof, as hereinafter provided, as such excess be, and hereby they are specifically consented to, authorized and approved. It is further

Ordered, That the proceeds arising from the sale of said bonds be, by said The Northern Ohio Traction and Light Company, devoted to and used for the following purposes, and no others, to wit:

From the sale of the first \$6,778,300, principal sum of said bonds:

The reimbursement of applicant's treasury for the moneys, not procured by the issue of stock, bonds, notes or other evidence of indebtedness, actually expended therefrom, within the five years next preceding the date of the filing of the application herein and to and including the thirty-first day of December, 1921, for capital purposes	\$2,495,820.55
For the construction of additions, extensions and improvements to its facilities, now under contract or in contemplation	455,804.00
For the redemptions, at 101, of applicant's present outstanding six year, seven per cent secured gold bonds of the principal sum of \$2,454,200.00	2,478,742.00
For the acquirement, at 94, of applicant's present outstanding first lien and refunding mortgage, seven per cent bonds	1,151,500.00

and

From the sale of the remaining \$4,721,700.00, principal sum of said bonds:

The acquisition, purchase and/or redemption of applicant's present outstanding seven year, six per cent secured gold bonds of the principal sum of	\$4,721,700.00
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It is further

Ordered, That, forthwith upon the acquisition of any of the aforesaid six year, seven per cent secured gold bonds, and seven year, six per cent secured gold bonds, the applicant render the same non-negotiable and, upon the acquisition of the whole of each such issues, cancel and destroy the same. It is further

Ordered, That upon the acquiring by applicant of said \$1,225,000, principal amount of its first lien and refunding mortgage, five per cent gold bonds, Series A, upon which applicant is now paying seven per cent interest under Order No. 2488, at not exceeding 94 and accrued interest, consent and authority is granted to applicant to cancel the agreement thereon providing for the payment of two per cent additional interest and the refund of the Pennsylvania State tax of not exceeding four mills on the dollar in any year; and to pledge under said general and refunding mortgage the said \$1,225,000 first lien and refunding mortgage gold bonds, Series A. And

the order heretofore issued, No. 2488, is hereby modified to the extent of restoring the consent and authority of the Commission to applicant to issue said \$1,225,000, principal amount, of first lien and refunding mortgage bonds as five per cent bonds, and to pledge the same as herein authorized. It is further

Ordered, That, upon acquiring, purchasing and/or redeeming any of applicant's seven year six per cent secured gold bonds, dated June 1, 1920, due June 1st, 1926, it cancel the same, and consent and authority is granted applicant to deposit its first lien and refunding mortgage, five per cent gold bonds, now pledged as collateral thereto, to the extent of one hundred and twenty-five per cent of the principal amount of said seven year, six per cent secured gold bonds, under said general and refunding mortgage, and pledge the same as additional security to the bonds issued thereunder. It is further

Ordered, That the orders of this Commission consenting to and authorizing the issue and disposition, by said The Northern Ohio Traction and Light Company of first lien and refunding mortgage, five per cent bonds of the principal sum of four million, eight hundred and seventy-two thousand dollars, in proceedings Nos. 1307, 1454, 1649 and 1944, be, and hereby they are amended and supplemented to provide that, pending the sale of said bonds, as in said orders provided, the same may be pledged from time to time as collateral security under the said general and refunding mortgage. It is further

Ordered, That the applicant make verified report to this Commission semi-annually, within fifteen days after the close of each calendar, semi-annual period, of the issue and disposition of said general and refunding mortgage bonds, the expenditure of the proceeds thereof pursuant to the terms and conditions of this order, the rendering non-negotiable and, when all of any such issue has been reacquired, the cancellation and destruction of each of said issues of bonds to be reacquired, and the pledge, under the authority herein granted, of any of said first lien and refunding mortgage, five per cent gold bonds.

No. 2525—In the Matter of the Application of The Cleveland Electric Illuminating Co. for Consent and Authority to Issue Its Common Capital Stock of the Par Value of Five Million, Two Hundred and Eighty-One Thousand, Eight Hundred Dollars (\$5,281,800). Prayer Granted.

(Dated April 12, 1922.)

This day, after full hearing, due notice of the time and place of which was given to all parties in interest, this matter came on for final consideration upon the application of The Cleveland Electric Illuminating Company, (a corporation duly organized and existing under and by virtue of the laws of the State of Ohio), asking the consent and authority of this Commission to issue and dispose of common capital stock of the par value of five million, two hundred and eighty-one thousand, eight hundred dollars, the proceeds arising from the sale thereof to be applied toward the reimbursement of applicant's treasury for the sum of \$5,321,190.35, (none of which was obtained by or procured from the issue of stock, bonds, notes or other evidences of indebtedness) expended therefrom, within the five years next preceding the date of the filing of the application herein, and to and including the 31st day of March, 1922, for the acquisition of property and for the construction of additions, extensions and improvements to its plants and facilities, not heretofore capitalized nor authorized to be capitalized by order of this Commission.

The Commission, being fully advised in the premises, finds:

That, within the five years next preceding the date of the filing of the application herein and to and including the 31st day of March, 1922, the applicant actually expended from its treasury for the acquisition of property and for the construction, completion, extension and improvement of its facilities, (not heretofore capitalized nor authorized to be capitalized by order of this Commission), the sum of \$5,321,199.35, none of which was obtained by or procured from the issue of stock, bonds, notes or other evidences of indebtedness, and

That the issue of applicant's common capital stock of the par value of \$5,281,800 is reasonably required, and the money to be procured thereby is necessary for the reimbursement of applicant's treasury, to the extent of such proceeds, for and on account of said uncapitalized, capital expenditures therefrom within said period aforesaid,

and is satisfied that consent and authority for the issue and dispo-

sition of said common capital stock should be granted. It is, therefore,

Ordered, That said The Cleveland Electric Illuminating Company be, and hereby it is authorized to issue its common capital stock of the par value of five million, two hundred and eighty-one thousand, eight hundred dollars (\$5,281,800), and that said common capital stock be sold for the highest price obtainable but not less than the par value thereof. It is further

Ordered, That the proceeds arising from the sale of said common capital stock be, by the applicant, devoted to and used for the following purpose, and no other, to wit:

The reimbursement, to the extent of such proceeds, of applicant's treasury for the sum of \$5,321,199.35, (none of which was obtained by or procured from the issue of stock, bonds, notes or other evidences of indebtedness), actually expended therefrom within the five years next preceding the date of the filing of the application herein and to and including the 31st day of March, 1922, for the acquisition of property and the construction, completion, extension and improvement of its facilities, (not heretofore capitalized nor authorized to be capitalized by order of this Commission), as more fully set forth and described in the detailed statement, marked "Exhibit A," appended to the application herein, which statement hereby is made a part of this order by reference.

It is further

Ordered, That the applicant make verified report to this Commission, semi-annually, within fifteen days after the close of each calendar, semi-annual period, of the issue and disposition of said common capital stock and of the expenditure of the proceeds thereof pursuant to the terms and conditions of this order.

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No. 2528—In the Matter of the Application of The Dayton Power and Light Company for Authority to Issue and Sell \$500,000 of Its First Lien and General Mortgage Three Year, Seven Per Cent Gold Bonds, Dated March 1st, 1920, and to Pledge \$667,000 of Its First and Refunding Mortgage Five Per Cent Gold Bonds, Dated June 1st, 1911. Prayer Granted.

(Dated April 13, 1922.)

The Commission having this day, by order duly made and entered in proceeding No. 2527, consented to and authorized the issue and disposition, by sale or pledge, of \$667,000, principal sum, of the first and refunding mortgage, five per cent gold bonds of The Dayton

Power and Light Company, (a corporation duly organized and existing under and by virtue of the laws of the State of Ohio), comes now said The Dayton Power and Light Company, after full hearing thereupon, due notice of the time and place for which was given to all parties in interest, and, by its application filed herein and the exhibits and affidavits accompanying the same, represents and shows to this Commission that it cannot, at this time, dispose of said first and refunding mortgage bonds by sale and, in pursuance of the authority granted to pledge the same pending sale, has arranged to issue and dispose of its first lien and general mortgage, three year, seven per cent gold bonds, dated March 1st, 1920, (secured by a deposit of said \$667,000, principal sum, of first and refunding mortgage bonds as collateral security therefor), of the principal sum of \$500,000, and asks the consent and authority of this Commission to issue and disposition of said first lien and general mortgage bonds.

Upon consideration whereof, and being fully advised in the premises, and having, in said proceeding No. 2427, found the issue of applicant's said first and refunding mortgage bonds of the principal sum of \$667,000 to be reasonably required and the money to be procured thereby, necessary for the reimbursement of applicant's treasury for the uncanceled, capital expenditure of \$501,729.14 therefrom within the period December 1st, 1920, to March 31st 1921, inclusive, the Commission further finds:

That, under the conditions now obtaining in the financial markets and surrounding the sale of securities, the issue and disposition of a short-term obligation, secured by a deposit as collateral security of the long-term securities authorized in said Proceeding No. 2527, is desirable for the applicant herein, in view of the heavy discount at which it will be necessary to sacrifice said long-term securities to obtain the moneys necessary for the reimbursement of applicant's treasury for said uncanceled, capital expenditure therefrom;

The issue of applicant's said first lien and general mortgage bonds (secured by a deposit as collateral security, of applicant's said first and refunding mortgage bonds of the principal sum of \$667,000) of the principal amount of \$500,000 is reasonably required and the money to be procured thereby is necessary for the reimbursement of applicant's treasury for the said sum of \$500,729.14, not procured by the issue of stock, bonds, notes or other evidences of indebtedness, actually expended therefrom, within the period December 1st, 1920, to March 31st, 1921, inclusive, for the provision of additions, extensions and improvements (not heretofore capitalized or authorized to be capitalized by order of this Commission) to its plants and facilities, and

That, the applicant now having bonds issued and outstanding in excess of its issued and outstanding capital stock, the issue and disposition of said first lien and general mortgage bonds in excess of applicant's issued and outstanding capital stock, and the expenditure of the proceeds thereof as such excess, should be specifically consented to, authorized and approved,

and is satisfied that consent and authority for the issue and disposition of applicant's said first lien and general mortgage bonds should be granted. It is, therefore,

Ordered, That said The Dayton Power and Light Company be, and hereby it is authorized to issue its first lien and general mortgage, three year, seven per cent gold bonds, (to be dated March 1st, 1920, and to be secured by a deposit, as collateral security, of applicant's said first and refunding mortgage, five per cent gold bonds, dated June 1st, 1911, of the principal sum of \$667,000, the issue and sale and, pending sale, pledge of which was authorized by the order this day made and entered in proceeding No. 2527), of the principal sum of five hundred thousand dollars (\$500,000), and that said first lien and general mortgage bonds be sold for the highest price obtainable but not less than the par value thereof plus accrued interest, provided, that the applicant may reimburse the holders of said bonds, or any of them for taxes (other than succession or inheritance taxes) assessed by the State of Pennsylvania upon any such bond, or bonds, or upon the holder, or holders, thereof as a resident, or residents, of the State of Pennsylvania by reason of his, or their, ownership thereof, but not to exceed four mills on the dollar in any year, and provided further that any such reimbursement of said Pennsylvania State Tax shall be made only upon the written request of such holders, or any of them, as have actually paid such taxes. It is further

Ordered, That the proceeds arising from the sale of said first lien and general mortgage bonds be, by the applicant, devoted to and used for the following purpose, and no other, to wit:

The reimbursement of applicant's treasury for and on account of the sum of \$501,729.14 (not procured by the issue of stock, bonds, notes or other evidences of indebtedness) actually expended therefrom, within the period December first, 1920, to March 31st, 1921, both inclusive, for the provision of additions, extensions and improvements, not heretofore capi-

talized or authorized to be capitalized by order of this Commission) to its plant and facilities.

It is further

Ordered, That the proceeds arising from any sale of said first and refunding mortgage bonds, so pledged as aforesaid, shall be applied, primarily, to the payment and discharge of said first lien and general mortgage bonds, and the balance of such proceeds held by the applicant herein subject to the further order of this Commission, and said order, so made and entered in proceeding No. 2527, hereby is supplemented and amended accordingly. It is further

Ordered, That the issue and disposition of said first lien general mortgage bonds in excess of applicant's issued and outstanding capital stock, and the expenditure of the proceeds thereof as such excess, as hereinbefore directed, be and hereby they are specifically consented to, authorized and approved. It is further

Ordered, That the applicant make verified report to this Commission of the issue and disposition of said first lien and general mortgage bonds and the expenditure of the proceeds thereof pursuant to the terms and conditions of this order.

ATTORNEY GENERAL

Under Section 1375, G. C., the Fee of Twenty-Five Dollars Charged Applicants for the Examination in Accountancy Provided by Section 1374, G. C., May Not Be Retained by the State Board of Accountancy in Event the Applicant is Precluded from Such an Examination by Reason of Ineligibility, but Under Such Circumstance Should Be Returned to Said Applicant.

No. 2916—(Opinion Dated March 9, 1922.)

Mr. L. W. Blyth, Secretary, State Board of Accountancy, 1400 Hanna Bldg., Cleveland, Ohio:

Dear Sir—Receipt is acknowledged of your recent communication which reads as follows:

“I have been requested by the Ohio State Board of Accountancy to obtain from you your opinion as to the intent of Section 1375 regarding refundment of fees.

The board requires that each application must be accompanied by a fee of twenty-five dollars (\$25) in the form of a draft, certified check or post-office money order, payable to the Treasurer of the Ohio State Board of Accountancy before the application will be considered.

In order to qualify, an applicant for a certified public accountant certificate must be twenty-one years of age, must be a citizen of the United States or must have declared intentions to become a citizen of the United States. The applicant is required to have a first grade high school diploma or an equivalent secondary education and at least three years' experience in the practice of accountancy.

On receipt of the application the secretary immediately corresponds with all references to verify the facts contained in the application. The board also spends considerable time and effort to determine whether or not the applicant is eligible for examination. If found ineligible, it has been the custom of the board to advise the applicant of his rejection and return the fee deposited.

We would be pleased to have your opinion as to whether or not the board is required to return the fee if the application is rejected after the board having spent considerable time and effort in obtaining the facts.

We enclose copy of the certified public accountant law and await with pleasure, your opinion.”

Consideration of the questions presented, involves apparently a construction of Sections 1374 and 1375 of the General Code.

Section 1374, G. C., provides:

"Each year, the state board of accountancy shall hold an examination for such certificate. Each applicant shall be examined in theory of accounts, practical accounting, auditing and commercial law as affecting accountancy. If three or more persons apply for certificates within not less than five months after the annual examination, the board shall hold an examination for them. The time and place of each examination shall be fixed by the board."

Section 1375, G. C., provides:

"At the time of filing the application for such examination and certificate, each applicant shall pay to the treasurer of the state board of accountancy a fee of twenty-five dollars. Such examination fee shall not be refunded, but an applicant may be re-examined without the payment of an additional fee within eighteen months from the date of his application."

It is thought that the "examination fee," specified by the provisions of Section 1375, G. C., quoted supra, is intended to be the fee chargeable by the state board of accountancy for the examination indicated in Section 1375, G. C., and which includes the subjects of theory of accounts, practical accounting, auditing, and commercial law as affecting accountancy.

In the several sections comprising the accountancy act it is nowhere stated that any portion of the twenty-five dollar fee charged for the examination in the subjects mentioned is to be considered as a fee covering a preliminary examination relative to the eligibility of the applicant. It is true Section 1373, G. C., provides certain qualifications required of persons practicing as public accountants, but such limitations would seemingly reach rather their right to practice accountancy than the right to be examined in the subjects specified in Section 1374, G. C. Such reasoning, however, is not intended to warrant the assumption that the board of accountancy may not pass upon the eligibility of those applying for examinations, but is thought rather to strengthen the conclusion, that the twenty-five dollar fee indicated in Section 1375, G. C., is an examination fee charged for the examination held by the state board of accountancy, for the purpose of determining the applicants' knowledge relative to the subjects specified, and which apparently do not include questions of the applicants' eligibility. Thus it would seem to follow that an applicant who is rejected by the board

as ineligible to be examined, could not upon any equitable grounds be charged a fee for an examination which in turn he is prevented from taking by the action of the board of accountancy in the instance. Reading together therefore Sections 1374 and 1375, G. C., it is thought rather that the paragraph reading "Such examination fee shall not be refunded, but an applicant may be re-examined without the payment of an additional fee within eighteen months from the date of his application" is intended to contemplate those cases where the applicant has been examined in the subjects mentioned in Section 1374, G. C., and has failed to pass such an examination.

In support of the view expressed, attention is directed to a former opinion of this department, found in Opinions of the Attorney General 1913, Vol. I, Page 922, wherein it is held, that where an application for an examination in accountancy is filed with the state board, accompanied by the required fee for such examination, and the applicant denied examination, the board should return to the rejected applicant the fee which he had deposited.

Concurring therefore with the views of my predecessor upon the subject considered, I am of the opinion that in cases where the applicant for examination in accountancy, has deposited with the state board the fee specified by Section 1374, G. C., and has been precluded from the examination provided by Section 1375, G. C., for reasons of ineligibility, said fee under such circumstances may not be retained by said board, but should in such cases be returned to the applicant.

SUPREME COURT

MOTION DOCKET

17275—John Schulte v. Dora Johnson. Motion by plaintiff to dispense with printing bill of exceptions in cause No. 17275 on the General Docket. Sustained.

17275—John Schulte v. Dora Johnson. Motion by plaintiff for extension of time to file printed record and brief in cause No. 17275 on the General Docket. Sustained.

17370—The Toledo & Ohio Central Railway Co. v. Jesse Giha, doing business under the name of G. T. Giha. Motion for an order directing the Court of Appeals of Lucas county to certify its record. Overruled.

17378—The Incorporated Village (now city) of Wilmington v. Harley W. Owens. Motion for an order directing the Court of Appeals of Clinton county to certify its record. Overruled.

17386—G. D. Staum v. J. C. Daft. Motion for an order directing the Court of Appeals of Hardin county to certify its record. Overruled.

17389—The Cleveland Baptist Association et al v. Samuel Scovil et al. Motion for an order directing the Court of Appeals of Cuyahoga county to certify its record. Sustained.

17399—The London & Lancashire Indemnity Co., of America v. Board of County Commissioners of Columbiana county. Motion for an order directing the Court of Appeals of Columbiana county to certify its record. Sustained.

17400—The Aetna Casualty & Surety Co. v. Board of County Commissioners of Columbiana county. Motion for an order directing the Court of Appeals of Columbiana county to certify its record. Sustained.

17405—G. D. Straham v. J. C. Daft. Motion for an order directing the Court of Appeals of Hardin county to certify its record. Overruled.

17417—State of Ohio v. Chas. W. Habig. Motion for leave to file petition in error to the Court of Appeals of Cuyahoga county. Sustained.

17418—Nellie May Bradley v. Paul Knepley. Motion for an order directing the Court of Appeals of Henry

county to certify its record. Overruled.

17418—Nellie May Bradley v. Paul Knepley. Motion by plaintiff for stay of execution in cause No. 17418 on the General Docket. Overruled.

17444—The Akron, Canton & Youngstown Railroad Co. et al. v. The Public Utilities Commission of Ohio. Motion by the American Vitrified Products Co., et al. to be made parties defendants in error in cause No. 17444 on the General Docket. Sustained.

17448—William J. Bialoski v. Thomas J. Clark et al. Motion for an order directing the Court of Appeals of Cuyahoga county to certify its record. Overruled.

17449—Edward W. Runyan v. Alice Runyan. Motion for an order directing the Court of Appeals of Vinton county to certify its record. Overruled.

17454—The Toledo Railway & Light Co. v. Harvey J. Jones. Motion for an order directing the Court of Appeals of Lucas county to certify its record. Overruled.

17455—The Hocking Valley Railway Co. v. The Public Utilities Commission of Ohio. Motion by the New York Coal Co. to be made party defendant in error in cause No. 17455 on the General Docket. Sustained.

17478—Vincent Chauncey Nigro v. State of Ohio. (At Chambers, April 13, 1922.) Motion for leave to file petition in error to the Court of Appeals of Tuscarawas county. Sustained.

17480—The State, ex rel. John S. Mohler, a taxpayer, v. Grant Beam et al. Motion by plaintiff for temporary injunction in cause No. 17480 on the General Docket. Sustained.

17473—James Cornwell v. State of Ohio. Motion for leave to file petition in error to the Court of Appeals of Franklin county. Sustained.

17340—Elia Dulgareff v. Teutonia Fire Insurance Co. Motion by defendant to correct Minute Book and Docket Entries in Cause No. 17340 on the General Docket. Overruled.

17340—Elia Dulgareff v. Teutonia Fire Insurance Co. Motion by defend-

ant to strike motion to certify record from the files in cause No. 17340 on the General Docket. Overruled.

17345—Ray West v. Ella Lucas et al. Motion by plaintiff to dispense with printing record in cause No. 17345 on the General Docket. Sustained.

17402—Joseph Oshsuer, Admr., v. The Cincinnati Traction Co. Motion for an order directing the Court of Appeals of Hamilton county to certify its record. Sustained.

17410—The Buckeye Castings Co. v. The State, ex rel. John G. Price, Atty. Gen., on behalf of Sol Greenawalt. Motion for an order directing the Court of Appeals of Allen county to certify its record. Overruled.

17410—The Buckeye Castings Co. v. The State, ex rel. John G. Price, Atty. Gen., on behalf of Sol Greenawalt. Motion by defendant to strike petition in error from the files in cause No. 17410 on the General Docket. Sustained.

17411—Stephanie Marie Malgars v. Louis Sugene Malgras. Motion for an order directing the Court of Appeals of Clermont county to certify its record. Overruled.

17413—The Andrews Asphalt Paving Co. v. The City of Middletown. Motion for an order directing the Court of Appeals of Butler county to certify its record. Overruled.

17414—The Columbus Railway, Power & Light Co. v. Harry A. Jones. Motion for an order directing the Court of Appeals of Franklin county to certify its record. Overruled.

17423—The Claredon Refining Co. v. The Cleveland Brass & Copper Mills, Inc. Motion for an order directing the Court of Appeals of Cuyahoga county to certify its record. Overruled.

17426—William D. Lavelly, Admr., v. Laura Rickey et al. Motion for an order directing the Court of Appeals of Franklin county to certify its record. Overruled.

17428—Walter Moeller v. Frank Moeller et al. Motion for an order directing the Court of Appeals of Franklin county to certify its record. Overruled.

17429—Frank Morrison, Admr., v. The Scioto Valley Traction Co. Motion for an order directing the Court

of Appeals of Franklin county to certify its record. Overruled.

17430—Max Rudner v. The Baltimore & Ohio Railroad Co. Motion for an order directing the Court of Appeals of Stark county to certify its record. Overruled.

17431—New Amsterdam Casualty Co. v. Board of Education of Cleveland Heights Village. Motion for an order directing the Court of Appeals of Cuyahoga county to certify its record. Sustained.

17432—Mamie L. Portia v. The Cleveland Co. Motion for an order directing the Court of Appeals of Cuyahoga county to certify its record. Sustained.

17442—August Dischner v. Julia Anna Dischner. Motion for an order directing the Court of Appeals of Hamilton county to certify its record. Overruled.

17445—The Columbus Packing Co. v. The State, ex rel. Hugo N. Schlesinger, Pros. Atty., et al. Motion by plaintiff for an order directing Claude S. Chamberlain, receiver, to pay to plaintiff the sum of \$21,289.14 in cause No. 17445 on the General Docket. Order to distribute \$18,000.00.

17485—The East Ohio Gas Co. v. The City of Cleveland. Motion by plaintiff to advance cause No. 17485 on the General Docket Sustained.

GENERAL DOCKET

16947—Vincent Wheatcraft et al v. Melissa Hall et al. Miami. Judgment reversed.

16994—The Oberlin Gas & Fuel Co. v. The Public Utilities Commission of Ohio. Public Utilities Commission. Dismissed by agreement of parties at cost of plaintiff in error.

17077—Mary J. Ferenbaugh et al v. George H. Ferenbaugh. Knox. Judgment affirmed.

17112—Alice M. Arnold et al v. Iva Newcomb. Hamilton. Judgment reversed.

17280—The Industrial Commission of Ohio v. Mary A Cross et al. Hamilton. Judgment reversed.

17044—Samuel Rosenthal et al v. The American Guaranty Co. et al. Franklin. Dismissed by consent of parties, without record. Costs paid.

17256—Joseph F. Briggs et al v. The Commission of the City of Dayton et al. Montgomery. Judgment affirmed on authority of Phelps v. Logan Gas & Fuel Co., 101 Ohio mSt., 144.

SECRETARY OF STATE

NEW INCORPORATIONS

The Safety Ice Pick Co., Alliance, \$10,000. Alex Miklos, Maggie Trumpeter, Anna Miklos, John Trombitas, George Trumpeter.

The Eppler's Exclusive Shop Co., Ashland, \$10,000. Edwin M. Eppler, L. V. Eppler, Eugene W. Hull, C. L. Gault, Guy S. Sears.

The Edgar Phillips Tailoring Co., Cleveland, \$3,000. Edgar Phillips, L. S. Sobel, E. Zalad, H. Dobrin, Frank S. Taylor.

The Summit Rubber Co., Akron, \$125,000. Morris N. Nobil, David M. Siff, Chas. E. Schwartz, George B. Nobil, Isador B. Nobil.

The Ruegay Realty Co., Columbus, \$5,000. M. Lawrence Millsbaugh, Walter S. Page, Warren S. Park, Fred Preston, Edw. A. Ey.

The Holland Commercial Co., Cleveland, \$10,000. L. S. Sobel, R. W. Wright, E. Zalad, Frank Taylor, N. Bennist.

The Avenue Amusement Co., Cleveland, \$10,000. J. C. Logue, W. T. Smith, G. O. Smith, H. M. Siering, Mabel Gulick, G. O. Smith.

The Parker Realty Co., Cleveland, \$25,000. A. E. Goldhamer, M. Walters, S. D. Heller, H. H. Parker, D. Schlesinger.

The Brubaker Tire & Rubber Co., Akron, \$400,000. Wm. A. Brubaker, Gustav A. Elfers, Irving M. Elfers, William E. Snyder, F. E. Shannon.

The Bonded Co., Cleveland, \$500. Joseph G. Ehrlich, Mark L. Fisher, Yetta Silver, Vance Holden, Fannie Gabriel.

The C. C. Ridenour & Sons Co., Springfield, \$10,000. C. C. Ridenour, J. F. Ridenour, C. T. Ridenour, A. W. Ridenour, E. R. Ridenour.

The Paint Creek Oil & Gas Co., S. Charleston, \$30,000. J. M. Kirkham, C. R. Florence, William Francis, Wm. D. Sprague, Thos. J. Hartley.

The Kelley Radio Co., Cincinnati, \$15,000. Winton F. Kelley, Henry S. Voelker, Charles S. Voelker, E. A. Leuchtenberg, Russel C. Brannan.

The Stanley-Hosack Co., Cleveland, \$500. Charles W. Pattison, L. L. Hosack, Frank J. Jontzen, E. Zalad, H. Dobrin.

The Robbins & Fonner Tire and Repair Co., Canton, \$10,000. George W. Fonner, Louis A. Robbins, Eddy L. Bowers, Charles R. Raedel, Augusta E. Bowen.

The Automotive Bearings & Equipment Co., Cleveland, \$25,000. Geo. F. Sewell, Geo. W. Veale, D. E. Morgan, John C. Barkley, L. S. Lommason.

The Ralberha Oil and Gas Co., Cleveland, \$5,000. A. W. Haiman, D. F. Klein, S. Marx, D. A. Levine, L. M. Rich.

The E. C. Shaw Co., Cincinnati, \$15,000. E. C. Shaw, W. Weber, Carl A. Grome, Robert F. Wood, Bernard Schroenig.

The Speedometer Service and Supply Co., Cleveland, \$5,000. Elijah Darrell, Michael F. Young, Michael H. Jaskell, P. E. Young, John P. Jaskell.

The Maag Bros. Transit Co., Marion, \$2500. Ray Maag, Fred Maag, Robert Maag, L. J. Hill, John H. Maag.

The Barnetson Stevens Fisher Co., Columbus, \$10,000. William Barnetson, James M. Stevens, A. R. Fisher, John M. Brown, L. M. Graham.

The Michigan-Ohio Automotive Equipment Co., Cleveland, \$50,000. Harry G. Smith, David Cowan, Elbert T. Fields, Hyman Sowan, Alex J. Marcus.

Increases

The Delaware Water Co., Delaware, from \$275,000 to \$557,500.

The Rapid Bottle Washer Co., Delphos, \$20,000 to \$100,000.

The Glow Electric Co., Cincinnati, from \$50,000 to \$100,000.

The Avon Sheffield Telephone Co., Avon, \$10,000 to \$50,000.

The Wooster Preserving Co., Wooster, \$35,000 to \$50,000.

Decreases

The Stratford Building Co., Cleveland, from \$100,000 to \$5,000.

The Paige Ohio Co., Cleveland, from \$450,000 to \$100,000.

The Brooklyn Mortgage, Investment & Securities Co., Cleveland, \$200,000 to \$500,000.

The Bee Bee Confection Co., Dayton, \$100,000 to \$150,000.

PUBLIC UTILITIES COMMISSION

No. 2422—The Cleveland Brick and Clay Company, Complainant, vs. The Baltimore and Ohio Railroad Company, The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, Erie Railroad Company, The New York, Chicago and St. Louis Railroad Company, The New York Central Railroad Company, and The Wheeling and Lake Erie Railway Company, Defendants.

(Dated April 7, 1922.)

Finding

Complainant is a corporation engaged in the manufacture of vitrified paving block (or brick) and other kinds of brick, at Cleveland, Ohio. By complaint filed November 4, 1921, it alleges that rates of defendants,

“for transporting vitrified paving block and paving brick between points within the switching limits of the City of Cleveland, * * * and * * * rates applicable to said traffic between points in the State of Ohio * * * operate to cause an unlawful discrimination against traffic originating within said switching limits and destined to private sidings or team tracks within such limits, and in favor of traffic originating at points without the said switching limits, and destined to private sidings or team tracks within said switching limits.”

and

“That prior to and since October 20, 1921, the charges for the transportation of complainant's property, in carloads to private sidings and team tracks within the switching of Cleveland, Ohio, were and are as follows:

“(a) When for delivery to private sidings on Baltimore and Ohio railroad, on which line complainant is located, 42 cents per net ton.

“(b) When for delivery to team track on said line of Baltimore and Ohio railroad, 56 cents per net ton.

“(c) When for delivery to private siding on connecting lines, 56 cents per net ton.

“(d) When for delivery to team track on connecting line The Baltimore and Ohio railroad's charge of 42 cents per net ton to the junction of connecting railroad, plus the charge of 56 cents per net ton of connecting line from junction to team tracks, making a total through charge of 98 cents per net ton.”

and

“That since October 20, 1921, the rates for the transportation of vitrified paving block, or brick, in carloads, between

points in the State of Ohio, have been the rates and charges in effect on August 25, 1920, prior to the forty per cent. (40%) increase, decreased by ten (10) cents per ton, with minima the rates and charges which were in effect June 24, 1918, increased twenty-five percentum."

Complainant's plant is located on a private siding, connecting exclusively with the line of the B. & O. railroad, within the switching limits of the City of Cleveland. Substantially all of its output is sold, shipped and used within the switching limits of the City of Cleveland. None of complainant's product is delivered by truck. Its shipments of paving block to destination within the switching limits of Cleveland are made by railroad to private sidings and team tracks of the carriers. The product is used for paving streets and is sold to contractors, f.o.b. point of delivery.

The intra-city movement here involved is transportation proper, as distinguished from switching by the Ohio Supreme Court. The rates complained of cover movements having both origin and destination within the switching limits of the City of Cleveland. The following is the Ohio Supreme Court's differentiation:

"We think that a switching service is rendered, within the meaning of Section 9000 (General Code) when a car is transferred from a side track, over the tracks of a railroad lying contiguous thereto, to the line of the company which is to have what is termed the 'line-haul,' or from the line of the company which has had the line-haul, over the tracks of the company which delivers the freight, to the siding of the shipper. In such case the railroad company receiving the car from, or delivering it to the company having the line-haul would be limited in its charge to the amount fixed by statute for switching service. We have no such case here—according to our view the movement of the car in question from Fernbank to Doppes switch was a transportation service for which a reasonable freight rate could be charged. The movement of the car in question by defendant in error (the delivering line in a two-line intra-city movement) was not incidental to the shipment as a whole but was part of it. Our holding is that the service rendered by the defendant in error was not a switching service, within the meaning of Section 9000, and therefore there could be no violation of its provisions." (Matter in parentheses ours.)

Doppes Sons Lumber Co. vs. C. N. O. & T. P. Ry. Co., 110 N. E., 640, 92 O. S.

The intra-city rates under attack, for various movements, are as shown above. Complainant stated that its chief competitors,

located outside the Cleveland switching district, are as follows:

The Metropolitan Paving Brick Co., Canton, Ohio.
The Burton-Townsend Brick Co., Ashtabula, Ohio, and
The John Kline Brick Co., Wickliffe, Ohio.

Canton and Ashtabula are located respectively, 58 and 54 miles distant from Cleveland. The rate on paving block from each of these points to Cleveland is \$1.20 per ton when for delivery upon private sidings and team tracks of originating line, \$1.20 per ton when for private siding delivery on connecting lines, and \$1.62 per ton (less \$3.50 per car) when for team track delivery on connecting lines. The applicable rates on complainant's shipments are as follows: 42c per ton for delivery on private siding of originating line, 56c per ton when for delivery on team track of originating line, 56c per ton when for delivery on private siding of connecting line, and 98c per ton when for team track delivery on connecting line. The operation of these rates certainly cannot be held to cause unlawful discrimination against complainant's traffic.

The record indicates that complainant's nearest competitor (located outside of the City of Cleveland) is The John Kline Brick Company. The Kline Company's plant is located at Wickliffe, Ohio, one and one-half miles outside the eastern boundary of the Cleveland switching limits on the rails of both the New York Central and Nickel Plate railroads. Consequently this company can reach private sidings and team tracks of either the New York Central or Nickel Plate located within the Cleveland switching limits by a one-line haul.

Pursuant to the order of this commission in Docket No. 2327, dated September 29, 1921, and effective October 20, 1921, the respondents reduced their intrastate rates on vitrified paving block to the basis in effect on August 25, 1920, less ten cents per ton, with minima, the rates in effect June 24, 1918, increased 25%. This reduction was applicable to shipments from the John Kline Company's plant into Cleveland but did not apply to transportation movements (like complainant's exclusively within switching limits.

Complainant contends that like reductions should have been made in the rates applicable to its intra-city traffic. This probably would be true had the intra-city rates been increased in the same manner as were the rates from points outside the switching limits. But the record shows, as will be indicated hereafter, that the rates were not subject to the same increases. The rates for the transportation of paving block within the switching limits of the City

of Cleveland were before this commission in 1916, (Docket No. 861, The Cleveland Shippers' Association vs. The B. & O. R. R. Co., et. al.) After an exhaustive investigation the commission found that the rates were not unjust, unreasonable or unlawfully discriminatory, and by its order dated January 20, 1917, the complaint was dismissed. Therefore for the purpose of this finding it will be unnecessary to analyze the rates prior to that time.

Referring to the intra-city rates herein complained of versus rates from Wickliffe to points within the Cleveland switching district, the effect of the various rate adjustments since January 20, 1917, is reflected by the following tables:

Cleveland Intra-City Rates on Paving Block.

(Rates shown are in cents per ton of 2,000 lbs.)

From complainant's plant when for delivery on	Rate in Effect Jan. 20, 1917	as increased June 25, 1918, by G. O. 28	Present rate as increased Aug. 26, 1920, I. C. C. Ex Parte 74	Percentage in- crease present rate over rate in effect Jan. 20, 1917.
Private siding, originating line.....	20	30	42	110
Team track, originating line.....	30	40	56	87
Private siding, connecting line.....	30	40	56	87
Team track, connecting line.....	50	70	98	96

Wickliffe to Cleveland Rates on Paving Block.

(Rates shown are in cents per ton of 2,000 lbs.)

When for delivery on	Rates in effect on Jan. 20, 1917	As increased June 25, 1918, G. O. 28	As increased Aug. 26, 1920, I. C. C. Ex Parte 74	Present rates as decreased Oct. 20, 1921, Order P. U. C. O. Docket 2427	Percentage in- crease present rates over rates in effect Jan. 20, 1917.
Private siding, originating line.....	30	70	98	60	100
Team track, originating line.....	30	70	98	60	100
Private siding, connecting line.....	30	70	98	60	100 plus
	plus \$2.50	plus \$2.50	plus \$3.50	plus \$3.50	
Team track, connecting line.....	per car 60	per car 100	per car 140	per car 102	70

It will be noted that under General Order 28 of the Director General of Railroads (effective June 25, 1918), the rates from Wickliffe to Cleveland for all deliveries were increased 40% per ton, whereas, the intra-city rates, applicable to complainant's product,

were increased but ten cents per ton for all deliveries except upon connecting line team track and, in that instance, by but twenty cents per ton.

Had the Cleveland intra-city rates, which were in effect prior to General Order 28, been increased and then decreased in the same manner as were the rates from Wickliffe into Cleveland, the intra-city rates today applicable to complainant's product would be as follows:

For delivery on private siding of originating line,	50c per ton
For delivery on team track of originating line.....	60c per ton
For delivery on private aiding of connecting line,	60c per ton
For delivery on team track of connecting line.....	80c per ton

Witness for complainant testified that 75% of complainant's intra-city shipments are consigned for delivery on private sidings and but 25% for team track delivery. Defendant's exhibit, Kimes No. 2, (as amended) shows that during the two-year period ending December 31, 1921, complainant shipped 837 cars brick destined to points within the Cleveland switching limits, of which 166 cars were for delivery upon tracks of originating carrier, and 671 cars for delivery upon tracks of connecting lines. Of the 671 cars delivered to connecting lines, 622 or 92.7% were consigned for private siding delivery and 49 or 7.3% for delivery upon team tracks.

The record shows that during the period October 26, 1921, to January 11, 1922, inclusive, the John Kline Company shipped into Cleveland 52 cars of brick via both New York Central and Nickel Plate railroads, of which 49 were for private siding delivery upon the line of the originating carrier and three for team track delivery upon line of the originating carrier. On all these shipments, except the three cars for team track delivery, the complainant had a rate advantage of 4c per per ton.

The Kline Compny's plant is favorably located upon the tracks of two large trunk lines (both entering the City of Cleveland), thus permitting it to make a large number of deliveries within the Cleveland switching limits by a single-line haul. Complainant's plant is unfavorably situated upon only one railroad while a large majority of its shipments are destined to points, within the switching limits, requiring a two-line haul. It appears, however, even though unfavorably situated, that the complainant has a rate advantage over the John Kline Company in every case except where delivery is made upon a team track of either the New York Central or Nickel Plate railroads. This commission cannot change that part of the rate adjustment which is unfavorable to complainant merely for

the purpose of offsetting its handicap due to a disadvantageous location.

We, therefore, find that the rates complained of are not unjust or unreasonable, nor are said rates unjustly or unlawfully discriminatory.

We further find that said complaint should be dismissed.

Order.

This matter was submitted upon the pleadings, the evidence and exhibits, and the argument of counsel.

Upon consideration whereof, and being fully advised in the premises, and having this day made and filed in writing its findings of fact herein, the commission further finds:

That the rates herein complained of are not unjust or unreasonable, nor are said rates unjustly or unlawfully discriminatory, and

That said complaint should be dismissed.

It is, therefore,

Ordered, That said complaint be, and hereby the same is dismissed.

No. 2507—In the Matter of the Application of The Oil Belt Telephone Company of Norwalk, Ohio, for Leave to Issue \$10,000.00 of its Eight Per Cent. Notes. Prayer Granted.

(Dated April 5, 1922.)

This day, it appearing to the commission from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, this matter came on for consideration upon the application of The Oil Belt Telephone Company, (a corporation duly organized and existing under and by virtue of the laws of the State of Ohio), asking the consent and authority of the commission to issue promissory notes of the total principal sum of ten thousand dollars, to bear interest at the rate of eight percentum per annum and to mature, serially, in the sum of \$1,000.00 upon the last day of each succeeding June and December, the proceeds arising from the sale thereof to be used to reimburse applicant's treasury for an equal amount of uncapitalized, capital expenditures alleged to have been made therefrom within the five years next preceding the date of the filing of the application herein.

The commission, being fully advised in the promises, finds from the pleadings and exhibits filed herein and its independent inquiry and investigation thereupon:

That, within the five years next preceding the date of the filing of the application herein, and to the thirtieth day of March, 1922, the applicant actually expended from its treasury, for the payment and discharge of its lawful capital obligations, the sum of \$8,000.00, none of which was obtained or procured by the issue of stock, bonds, notes or other evidences of indebtedness;

That the additional \$2,000.00 so pleaded by the applicant herein was actually expended more than five years prior to the date of the filing of the application herein, and

That the issue of applicant's said promissory notes of the principal sum of \$8,000.00 is reasonably required and the money to be procured thereby is necessary for the reimbursement of applicant's treasury for the aforesaid uncanceled, capital expenditure therefrom,

and is satisfied that consent and authority for the issue and disposition, by the applicant, of said promissory notes of the principal sum of \$8,000.00 should be granted. It is, therefore,

Ordered, That said The Oil Belt Telephone Company be, and hereby it is authorized to issue its promissory notes of the principal sum of eight thousand dollars (\$8,000.00), to bear interest at the rate of eight (8%) per centum per annum, and to mature, serially in the sum of one thousand dollars upon the last days of each succeeding June and December; such notes to be sold for the highest price obtainable but not less than the principal sum thereof. It is further

Ordered, That the proceeds arising from the sale of said notes be, by the applicant, devoted to and used for the reimbursement of its treasury for the \$8,000.00, not procured by the issue of stock, bonds, notes or other evidences of indebtedness, actually expended therefrom, within the five years next preceding the date of the filing of the application herein, for the payment and discharge of its lawful, capital indebtedness, and for no other purpose whatsoever. It is further

Ordered, That the applicant make verified report to this commission of the issue and disposition of said notes and of the expenditure of the proceeds thereof pursuant to the terms and conditions of this order. It is further

Ordered, That said application, insofar as it asks consent and authority to issue such promissory notes of the additional principal sum of two thousand dollars be, and hereby it is denied.

No. 2529—In the Matter of the Application of The Dayton Power and Light Company for Authority to Issue \$500,000.00 Par Value of its Six Per Cent. Cumulative Preferred Stock. Prayer Granted.

(Dated April 18, 1922.)

This day, after full hearing, due notice of the time and place of which was given to all parties in interest, this matter came on for consideration upon the application of The Dayton Power and Light Company, (a corporation duly organized and existing under and by virtue of the laws of the State of Ohio), asking the consent and authority of this commission to issue and dispose of six per cent. cumulative preferred capital stock of the par value of five hundred thousand dollars, the proceeds arising from the sale thereof to be used to reimburse its treasury for uncanceled, capital expenditures therefrom within the five years next preceding the date of the filing of the application herein.

The commission, being fully advised in the premises, finds:

That, within the period March 31st to May 31st, 1921, the applicant actually expended from its treasury the sum of \$428,005.20, none of which was obtained from the issue of stock, bonds, notes or other evidences of indebtedness, for the construction of additions, betterments and improvements to its plant and facilities, not heretofore capitalized by order of this commission, and

That the issue of applicant's said preferred capital stock of the par value of \$500,000.00 is reasonably required and the money to be procured thereby necessary for the reimbursement of its treasury for and on account of the aforesaid uncanceled, capital expenditures therefrom,

and is satisfied that consent and authority for the issue and disposition of said preferred capital stock should be granted. It is, therefore,

Ordered, That said The Dayton Power and Light Company be, and hereby it is authorized to issue its six per cent. cumulative preferred capital stock of the par value of five hundred thousand dollars (\$500,000.00), and that said capital stock be sold for the highest price obtainable but not less than eighty-five (85) per centum of the par value thereof. It is further

Ordered, That any discount arising from a sale of said preferred capital stock for less than the par value thereof be extinguished pursuant to the rules and regulations heretofore prescribed by this commission. It is further

Ordered, That the proceeds arising from the sale of said pre-

ferred capital stock be, by the applicant devoted to and used for the reimbursement of its treasury for and on account of the sum of \$428,005.20, not procured by the issue of stock, bonds, notes or other evidences of indebtedness, actually expended therefrom, within the period March 31st to May 31st, 1921, for the construction of additions, betterments and improvements to its plant and facilities, not heretofore capitalized or authorized to be capitalized by order of this commission, and for no other purpose whatsoever. It is further

Ordered, That the applicant make verified report to this commission of the issue and disposition of said preferred capital stock and, in reasonable detail, the expenditure of the proceeds thereof pursuant to the terms and conditions of this order.

J

No. 2502—In the Matter of the Application of The Pennsylvania-Ohio Electric Company for Consent and Authority for the Issuance of \$3,000,000.00 Aggregate Principal Amount of The Pennsylvania-Ohio Electric Company First and Refunding Joint Mortgage Gold Bonds. Prayer Granted.

(Dated April 4, 1922.)

This day (it appearing to the Commission from the verified allegations in said pleadings and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary), this matter came on for consideration upon the application and the amendment to the application of The Pennsylvania-Ohio Electric Company (a corporation duly organized and existing under and by virtue of the laws of the States of Ohio and Pennsylvania, and the owner of interurban railway and public utility properties in said States), asking the consent and authority of this Commission to issue and dispose of First Mortgage and Collateral Trust Bonds, bearing interest at the rate of six and one-half percentum per annum, to be dated March first, 1922, and to mature September first, 1933, and to be issued subject to such other terms and provisions as may be provided in the mortgage agreement under which said bonds are to be issued, of the total principal sum of three million dollars, the proceeds arising from the sale thereof to be used:

To discharge the First and Refunding Mortgage Bonds, now outstanding, of the principal sum of \$1,487,000.00, issued by the Pennsylvania and Mahoning Valley Railway Company,

the payment of which has been assumed by the applicant, and which mature upon the first day of May, 1922;

To discharge a floating indebtedness of the aggregate principal sum of \$836,055.00, alleged to have been incurred in connection with the extension and improvement of applicant's facilities, and other lawful, capital expenditures;

To reimburse its treasury for the sum of \$525,908.52, alleged to have been expended for additions, extensions and improvements to its facilities to the thirty-first day of January, 1922, none of which was procured by the issue of stock, bonds, notes or other evidence of indebtedness, and

To provide certain contemplated additions, extensions and improvements its facilities, the cost of which has been estimated at the sum of \$200,240.60.

The Commission, being fully advised in the premises, finds from the pleading exhibits filed herein and its independent inquiry and investigation thereupon:

That there are now outstanding, as a lien against applicant's property, \$1,457,000.00 First and Refunding Mortgage Bonds, issued by the Pennsylvania and Mahoning Valley Railway Company, the payment of which has been assumed by the applicant, and which mature upon the first day of May, 1922, and must, upon said day, be paid and discharged or lawfully refunded;

That, within the five years next preceding the date of the filing of the application herein and to the thirty-first day of January, 1922, the applicant actually expended from its treasury, for the construction of additions, extensions and improvements to its facilities within the State of Ohio, the sum of \$240,315.00, and, for the payment and discharge of outstanding underlying bonds, the further sum of \$100,000.00, none of which was obtained by the issue of stock, bonds, notes or other evidences of indebtedness;

That, for and on account of the provision of certain other additions, extensions and improvements to its facilities within the State of Ohio, the applicant is indebted in the sum of \$186,426.00;

That the applicant now has under contract or in contemplation, the provision of certain additions, extensions and improvements to its facilities within the State of Ohio, the cost of which has been conservatively estimated at the sum of \$136,500.00;

That the other additions to applicant's property herein involved are to be made within the State of Pennsylvania, and may, therefore, be capitalized without the consent and authority of this Commission, and

That the issue of applicant's said First Mortgage and Collateral Trust Bonds of the principal sum of \$2,400,000.00 is reasonably required and the money to be procured thereby is

necessary for the payment and discharge or lawful refunding of indebtedness, the reimbursement of applicant's treasury for uncapitalized, capital expenditures, and the construction, completion, extension and improvement of applicant's facilities within the State of Ohio, as set forth in the first four findings herein,

and is satisfied that consent and authority for the issue and disposition of the applicant's said First Mortgage and Collateral Trust Bonds of the principal sum of \$2,400,000.00 should be granted. It is therefore

Ordered, That said The Pennsylvania-Ohio Electric Company be, and hereby it is authorized to issue its First Mortgage and Collateral Trust Bonds, to bear interest at the rate of six and one-half percentum per annum, to be dated March first, 1922, to mature September first, 1933, and to be subject to such other terms and provisions as may be provided in the mortgage agreement under which said bonds are to be issued, of the principal sum of two million, four hundred and eight thousand dollars (\$2,408,000.00), and that said bonds be sold for the highest price obtainable, but not less than eighty-six and three hundred eighty-nine thousandths (86.389) per centum of the principal sum thereof. It is further

Ordered, That any discount arising from a sale of said bonds for less than the principal sum thereof be amortized pursuant to the rules and regulations heretofore prescribed by this Commission. It is further

Ordered, That the proceeds arising from the sale of said bonds be, by the applicant, devoted to and used for the following purposes, and no others, to-wit:

The payment and discharge at maturity, May 1, 1922, of the First and Refunding Mortgage Bonds issued by the Pennsylvania and Mahoning Valley Railway Company, the payment of which has been assumed by the applicant..... \$1,457,000.00

The reimbursement of applicant's treasury for the sums of \$220,315.25 and \$100,000.00, expended therefrom within the five years next preceding the date of the filing of the application herein and to the thirty-first day of January, 1922, for additions, extensions and improvements to its facilities in the State of Ohio, and the payment and discharge of outstanding underlying bonds, none of which was procured by the issue of stock, bonds, notes or other evidences of indebtedness..... 320,315.25

The payment and discharge of its floating indebtedness incurred and created for and on account of the provision of other additions, extensions, and improvements to its facilities in the State of Ohio	165,420.08
The provisions of certain additions, extensions and improvements to its facilities within the State of Ohio, now under contract or in contemplation, as more fully described in the schedule appended to the application herein, the cost of which has been estimated at the sum of	150,500.00

It is further

Ordered, That, forthwith upon the acquisition of the aforesaid First and Refunding Mortgage Bonds issued by the said Pennsylvania and Mahoning Valley Railway Company, the same be, by the applicant, cancelled and destroyed. It is further

Ordered, That the applicant make verified report to this Commission, semi-annually, within fifteen days after the close of each calendar, semi-annual period of the issue and disposition of said bonds, the expenditures of the proceeds thereof and the cancellation and destruction of said bonds issued by the said Pennsylvania and Mahoning Valley Railway Company, pursuant to the terms and conditions of this order. It is further

Ordered, That, insofar as said application asks consent and authority to issue and dispose of said First Mortgage and Collateral Trust Bonds of the additional principal sum of five hundred and ninety-two thousand dollars (592,000.00) for and on account of additions, extensions and improvements, provided and to be provided to its facilities outside of the State of Ohio, the same be, and hereby it is denied for want of jurisdiction.

3

No. 2496—In the Matter of the Application by The Cleveland Union Terminals Company for Approval of the Issuance of its Capital Stock in the Par Amount of \$10,000.00 and for Authority to Issue its First Mortgage Sinking Fund Gold Bonds Not Exceeding \$60,000,000.00. Prayer Granted.

(Dated April 20, 1920.)

This day, after full hearing, due notice of the time and place of which was given to all parties in interest, this matter came on for consideration upon the application, as supplemented and amended, of The Cleveland Union Terminals Company, (a corporation duly

organized and existing under and by virtue of the laws of the State of Ohio), asking the consent to and approval, by this commission, of the issue and disposition of its common capital stock of the par value of \$10,000.00, and the consent and authority of the commission for the issue and disposition of its fifty-year, first mortgage, sinking fund, gold bonds, series A, dated April 1st, 1922, and bearing interest at the rate of five and one-half per centum per annum, of the principal sum of \$12,000,000.00, the proceeds arising from the sale of said capital stock and bonds to be used to discharge applicant's indebtedness to The New York Central Railroad Company, The Cleveland, Cincinnati, Chicago and St. Louis Railway Company and The New York, Chicago and St. Louis Railroad Company, and for the acquisition, construction and equipment of applicant's proposed passenger terminal at Cleveland, Ohio, with approaches, buildings, tracks, rolling stock, equipment and appurtenances.

The commission, being fully advised in the premises, finds:

That the applicant has in contemplation the construction and operation of a passenger terminal in the City of Cleveland, Ohio, with all necessary approaches, buildings, tracks, rolling stock, equipment and appurtenances, the cost of which it estimates at the sum of \$54,562,000.00;

That the issue of applicant's said common capital stock of the par value of \$10,000.00 and its said first mortgage, series A, bonds of the principal sum of \$12,000,000.00 is reasonably required, and the money to be procured thereby, necessary for the payment and discharge of applicant's lawfully, capitalizable indebtedness, heretofore incurred for and on account of the acquisition of property and the construction of its facilities, and for the acquisition of further property and the further construction of applicant's facilities, and

That the issue and disposition of applicant's said first mortgage, series A, bonds of the principal sum of \$11,990,000.00 in excess of its issued and outstanding capital stock, and the expenditure of the proceeds thereof as such excess should be specifically consented to, authorized and approved,

and is satisfied that consent and authority for the issue and disposition of said capital stock and first mortgage, series A, bonds should be granted. It is, therefore,

Ordered, That said The Cleveland Union Terminals Company be, and hereby it is authorized to issue its common capital stock of the par value of ten thousand dollars (\$10,000.00) and its fifty year, first mortgage, sinking fund, gold bonds, series A, dated April 1st, 1922, and bearing interest at the rate of five and one-half

(5½) precentum per annum, of the principal sum of twelve million dollars (\$12,000,000.00), and that said capital stock and bonds be sold for the highest price obtainable but not less than the par value of said capital stock nor less than ninety-two and one-half (92½) percentum of the principal sum of said bonds. It is further

Ordered, That any discount arising from a sale of said bonds for less than the principal sum thereof be amortized pursuant to the rules and regulations heretofore prescribed by this commission. It is further

Ordered, That the issue of \$11,990,000.00, principal sum, of said bonds in excess of applicant's issued and outstanding capital stock, and the expenditure of the proceeds thereof, as such excess, as hereinafter provided, be, and hereby they are specifically consented to, authorized and approved. It is further

Ordered, That the proceeds arising from the sale of said capital stock and first mortgage, series A, bonds be, by the applicant devoted to and used for the following purposes, and no others, to wit:

(a) The payment and discharge of applicant's lawfully, capitalizable indebtedness, incurred to February 27th, 1922, and

(b) The acquisition of property, and the construction and equipment, subsequent to said February 27th, 1922, of applicant's proposed passenger terminal at Cleveland, Ohio, with all necessary approaches, buildings, tracks, rolling stock, equipment and appurtenances.

It is further

Ordered, That the applicant make verified report to this commission, semi-annually, within fifteen days after the close of each calendar, semi-annual period, beginning with the period ended June 30th, 1922, of the issue and disposition of its said capital stock and first mortgage, series A, bonds and, in full detail of the expenditure of the proceeds thereof pursuant to the terms and conditions of this order.

ATTORNEY GENERAL

Thirty Days After the Proclamation of the Secretary of State a Village Advanced to a City Automatically Becomes a Health District and the Officers of Such City are Charged With the Appointment of a City District Board of Health.

No. 2922—(Opinion Dated March 9, 1922.)

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

Gentlemen: Your letter of recent date received in which you request the opinion of this department on the following question:

"May a village becoming a city on January 1, 1922, constitute a city health district on or after such date under the provisions of Section 1261-16 of the General Code?"

General Code Section 1261-16 is as follows:

"For the purpose of local health administration the state shall be divided into health districts. Each city shall constitute a health district and for the purposes of this act shall be known as and hereinafter referred to as a city health district. The townships and villages in each county shall be combined into a health district and for the purposes of this act shall be known as and hereinafter referred to as a general health district. As hereinafter provided for, there may be a union of two general health districts or a union of a general health district and a city health district located within such district."

The following sections of the General Code show the classification of cities and villages and the advancement of village officers to city officers:

"Sec. 3497. Municipal corporations, which, at the last federal census, had a population of five thousand or more, shall be cities. All other municipal corporations shall be villages. Cities which, at any future federal census, have a population of less than five thousand shall become villages. Villages which, at any future federal census, have a population of five thousand or more, shall become cities."

"Sec. 3498. . When the result of any future federal census is officially made known to the secretary of state, he forthwith shall issue a proclamation, stating the names of all municipal corporations having a population of five thousand or more, and the names of all municipal corporations having a population of less than five thousand, together with the population of all such corporations. A copy of the proclamation shall forthwith be sent to the mayor of each municipal cor-

puration, which copy shall be forthwith transmitted to council, read therein and made a part of the records thereof. From and after thirty days after the issuance of such proclamation each municipal corporation shall be a city or village, in accordance with the provisions of this title."

"Sec. 3499. Officers of a village advanced to a city, or of a city reduced to a village, shall continue in office until succeeded by the proper officers of the new corporation at the next regular election, and the ordinances thereof not inconsistent with the laws relating to the new corporation shall continue in force until changed or repealed."

Section 4404 G. C. provides for the establishment of a board of health and is as follows:

"Sec. 4404. The council of each city constituting a city health district, shall establish a board of health, composed of five members to be appointed by the mayor and confirmed by the council, to serve without compensation, and a majority of whom shall be a quorum. The mayor shall be president by virtue of his office. Provided that nothing in this act contained shall be construed as interfering with the majority of a municipality constituting a municipal health district, making provision by charter for health administration other than as in this section provided."

Section 3499 advances village officers to city officers. Being so advanced they are charged with performing the duties of city officials.

In the case of *Wise vs. Barberton*, 20 O. C. n. s. 390, the court said in its discussion as to whether village officers advanced to city officers, by reason of the proclamation of the secretary of state, function according to the laws governing cities or according to the laws governing villages.

"What is meant by the expression 'laws relating to the new corporation?' It means that part of the municipal code which lays down the rules governing cities, if the new corporation is a city, as in this case.

The laws governing cities, then, apply here, and we hold that the law vesting the veto power in the mayor of a city applies and the mayor had a right to veto the ordinance of December 11, 1911, and it never went into effect, because it was not passed over his veto."

General Code Section 1261-16, above quoted, provides that a city is a health district; Section 3497 designates what shall be villages and what cities; Section 3498 indicates at what time a village becomes a city; Section 3490 continues village officers in office until the next regular election.

As pointed out in 20 C. C. n. s. 390, above referred to, upon advancement of a village to a city, village officers become city officers. The village officers advanced to city officers are therefore charged with the appointment of a board of health as provided in General Code 'Section 4404.

The above review is made for the purpose of showing that in thirty days after the proclamation of the secretary of state a municipality composed of five thousand or more inhabitants becomes not only a city in name but a city in fact, its officials being charged immediately with the duty of conducting its affairs according to the laws governing cities.

General Code Section 1261-16 is clear and unambiguous. The statement as contained in the statute, "each city shall be a health district * * *" permits of but one construction when consideration is given to the duties of the advanced officials as above outlined.

You are therefore advised that thirty days after the proclamation of the secretary of state, a village advanced to a city automatically becomes a health district and the officers of said city are charged with the appointment of a city district board of health.

*
The County Treasurer is Authorized to Receive Less Than the Amount of Taxes With Which He is Charged on the Duplicate if He Can Show Good Cause for His Failure to Collect the Remainder, Whether the Same be Principal Tax or Penalty.—The Consequence of His Act is not to Expunge, but Leaves it Unsatisfied, Subject to be Credited to Him as Uncollectible and Delinquent at the Succeeding Final Settlement, at Which Time the Treasurer Must Make a Showing of His Inability to Collect.—The Treasurer Would be Protected by an Order of Court Under Section 2660, General Code, Finding That Because of Prior Liens, Etc., Only the Principal Sum of the Taxes Without Penalty Should or Could be Paid by a Receiver.

No. 2950.—(Opinion Dated March 28, 1922.)

Hon. Lawrence H. Webber, Prosecuting Attorney, Elyria, Ohio.

Dear Sir: In your letter of recent date you request the opinion of this department on the following question:

Is a county treasurer authorized to accept from the receiver of an insolvent corporation, the property of which is heavily encumbered by mortgage, an offer to pay the principal sums of taxes without the penalties that have accrued on account of the non-payment of the tax within the time fixed by law?

No specific statutory authority has been found for such procedure. In fact, no county officer is authorized to compromise a claim for general property taxes. *Peters v. Parkinson*, 83 O. S., 36, decides that the commissioners may not do this after suit brought by the county treasurer to enforce collection, but there is some reasoning in the case which goes beyond the actual decision therein. For example, it is remarked on page 49 that:

"Another, and perhaps sufficient reason why the county commissioners could not rightfully settle or remit the taxes sued for in this case is that such taxes were not wholly due to, nor were they wholly levied for, the use of Holmes county, but there was included therein as well, state, township, municipal, and other taxes.

There is no showing in the letter of the treasurer that any part of the taxes was erroneously assessed or that the penalty accrued through the negligence of any officer charged with the duty under the law. That being the case, there is no authority to correct the duplicate in the treasurer's hands, or to remit the penalty as such. The only facts shown by the letter reflect upon the probability of collecting these taxes in due course of law. It is said that the property is so heavily mortgaged that it is possible that the claims thereby secured will nearly exhaust the property. If this is so the claim for such taxes would be postponed, for there is no lien for personal property taxes; and while such taxes are by virtue of Section 11138 of the General Code, a preferred claim, they are not preferred in prejudice of liens obtained in good faith and for value. See Section 11139. These sections by analogy govern distribution of estates in the hands of receivers.

There being strong likelihood, therefore, that the secured claims would exhaust the estate, the settlement offered by the receiver would seem to be a fair one, if these statements are correct in fact. It remains to be considered whether there is any way in which the settlement can be accepted.

The treasurer can of course accept if he will any sum tendered in payment of taxes of this character. There is some restraint upon the receipt of taxes charged upon real estate imposed by Section 2665 of the General Code, but this does not apply to personal taxes.

The only consequence then of a failure on the part of the county treasurer to collect personal taxes with which he is charged is that he must give a reason at the time of the annual settlement

between him and the county auditor for his inability to collect the tax for the entire amount. Section 2596 reflects upon this point, and provides in part as follows:

"* * * At each August settlement, the auditor shall take from the duplicate previously put into the hands of the treasurer for collection a list of all such taxes as the treasurer has been unable to collect, therein describing the property on which such delinquent taxes are charged as described on such duplicate and note thereon in a marginal column the several reasons assigned by the treasurer why such taxes could not be collected. Such last mentioned list shall be signed by the treasurer, who shall testify to the correctness thereof, under oath, to be administered by the auditor."

Section 2597 then authorizes the taxes returned delinquent to be deducted from the amount which the treasurer is charged on settlement.

There are then made up two delinquent lists, one for real estate (Section 2601, G. C.) and one for personal taxes (Section 5694, G. C.). The county treasurer has no further immediate responsibility as to the former, but has with respect to the latter. See the section just cited. The delinquent personal duplicate as made up by the auditor on the basis of the return of the duplicate at settlement time is to be delivered to the treasury, who by Section 5695, G. C., is commanded "to forthwith collect the taxes and penalties on the duplicate by any of the means provided by law." The statute goes on to provide different "means" for the collection of delinquent personal taxes in addition to those already provided for, but nowhere is it explicitly provided that the county treasurer who receives the delinquent property tax duplicate is personally charged with the taxes. Such a thing, of course, would be absurd. He is to collect, and collect what he can. In the absence of any restrictive provision then, it seems reasonably clear that after the delinquent duplicate is in the hands of the treasurer, he is clearly entitled duplicate any amount that he sees fit in part payment of a charge against a person for taxes of this character. He is not, of course, permitted to release the person from all claims, and the charge remains on the duplicate. It thus appears that before settlement time, if good and sufficient reasons are given for the failure of the treasurer to collect all or any part of the personal tax, he may take what is offered (but not, of course, in full settlement) and the remainder only will go on the delinquent list. After settlement time he is likewise authorized to receive any payment that is offered as part payment. Neither he or any other officer

is authorized to remit the balance of the charge, however. So that if the offer of the receiver in this case is to pay the principal sum of the taxes with the understanding that the charge for the penalty is to be expunged, the strict answer to the question is that the offer cannot be accepted.

However, it seems that a practical way out of the difficulty can be found by the treasurer under such circumstances to avail himself of the special remedy provided by Section 2660 of the General Code for his own protection. This section provides as follows:

"If the county treasurer is unable to collect by distress taxes assessed upon a person or corporation or an executor, administrator, guardian, receiver, accounting officer, agent or factor, he shall apply to the clerk of the court of common pleas in his county at any time after his semi-annual settlement with the county auditor, and the clerk shall cause notice to be served upon such corporation, executor, administrator, guardian, receiver, accounting officer, agent or factor, requiring him forthwith to show cause why he should not pay such taxes. If he fails to show sufficient cause, the court at the term to which such notice is returnable shall enter a rule against him for such payment and the costs of the proceedings, which rule shall have the same force and effect as a judgment at law and shall be enforced by attachment or execution or such process as the court directs."

Here is an opportunity for the treasurer to secure an order of court declaring that sufficient cause has been shown for the abatement of the tax itself. Such an order of court would be a protection to the treasurer.

Possibly a direct intervention in the receivership proceedings would accomplish the same purpose, but it would seem best to follow the statute strictly.

It is the opinion of this department, therefore, that a treasurer is authorized to receive less than the amount with which he stands charged on the duplicate if he can show good cause for his failure to collect the remainder, whether the same be principal tax or penalty; that the consequence of his failure to collect is not to expunge the charge, but simply to leave it unsatisfied, subject to be credited to him as uncollectible and delinquent at the succeeding final settlement, at which time the treasurer must make a showing of his inability to collect, and the treasurer would be perfectly protected by an order of court under Section 2660 of the General Code finding that because of prior liens, etc., only the principal sum of the taxes without the penalty should or could be paid by the receiver.

SUPREME COURT

SYLLABI OF REPORTED CASES

No. 17280—The Industrial Commission of Ohio v. Mary A. Cross and Maize Cross. Error to the Court of Appeals of Hamilton county. Robinson, J.

1. In the enactment of the present workmen's compensation law the legislature acted in pursuance of the authority conferred by Section 35, Article II of the Constitution of Ohio, adopted in 1912, and where it used the same words or terms used in that section it will be presumed that it used them in the same sense that they are therein used.

2. Section 35, Article II of the Constitution, differentiates between "injuries" and "occupational diseases." If "occupational diseases" were not comprehended in the term "injuries" by that section of the constitution, diseases other than occupational diseases were not so comprehended.

3. The term "injury" as used in Section 1465-68, General Code, does not include diseases which are contracted, as distinguished from diseases which are occasioned by or follow as a result from physical injury.

Judgment reversed.

Hough, Jones and Matthias, JJ., concur.

No. 16947—Vincent Wheatcraft and Harriet Wheatcraft v. Melissa Hall et al. Error to the Court of Appeals of Miami county. Robinson, J.

By Sections 8573 and 8574, General Code, the legislature classified real estate having the characteristic of having come to an intestate from an ancestor gratuitously, as distinguished from real estate which came from an ancestor for a consideration or subject to a condition or charge.

Judgment reversed.

Marshall, C. J., Johnson and Wanamaker, JJ., concur. Jones, J., dissents.

No. 17077—Mary J. Ferebaugh, et al. v. George H. Ferenbaugh. Error to the Court of Appeals of Knox county. Jones, J.

1. A clause in a deed, releasing a son's expectancy of inheritance from his mother, is invalid, and does not operate to confer title by estoppel or otherwise upon the other heirs of the mother. (Needles, Extr., v. Needles, 7 Ohio St., 432, followed.)

2. Cotenants claiming to hold title by adverse possession against such son tenant cannot rely upon such release made to the mother, to prove title by adverse possession. The title acquired by the releasor becomes a new acquisition of property at the death of the mother, and the conduct of the cotenants, in order to establish adverse possession, should be confined to proof of acts done or declarations made after the releasor's inheritance was acquired from the mother.

Judgment affirmed.

Marshall, C. J., Johnson and Wanamaker, JJ., concur. Robinson, J., took no part in the consideration or decision of the case.

No. 17112—Alice M. Arnold et. al. v. Iva Newcomb et. al. Error to the Court of Appeals of Hamilton county. Hough, J.

1. The rights of contending parties to the proceeds of an insurance policy or certificate in a mutual benefit association in this state, each claiming to be the lawful beneficiary thereof, are determined by a construction and interpretation of the contract itself.

2. Pertinent, valid legislative acts in force at the time of the making of the contract, unless the effect thereof is subsequently changed by mutual act or agreement of the insurer and insured, together with the valid rules, regulations and by-laws of the association to which the certificate or policy makes reference, must be taken into account in such construction, as a part of the contract.

3. In order to effect a change of the beneficiary named in the insurance policy or certificate the insured must follow and substantially comply with the method prescribed in the rules, regulations and by-laws of the association.

4. Where within certain restrictions, the statute (Section 9467, General Code) permits the insured to change his beneficiary in accordance with the rules, laws and regulations of the society, and where the rules, laws and regulations of the society, in harmony with the statute, provide for a change of beneficiary and the method by which the same may be accomplished, the right of the insured who follows the prescribed method in effecting the change may not be questioned.

5. Where an insured in a benefit association, having acquired a different status by entering into a marriage contract during the continuance of his insurance contract, and with the manifest intention of making his wife the beneficiary, executes the transfer of beneficiary on the back of the policy in the manner and form provided therefor, delivering the same to his wife and continuing the policy in

force by the payment of dues until the time of his death, without making further attempt to change the beneficiary or recover possession of the policy and through inadvertence or ignorance fails to forward it to the general secretary and treasurer until after the death of the insured, and the home office of the association receives and cancels the policy and acknowledges liability thereon, but declines to issue a new certificate with new designation of beneficiary, such transfer, when challenged in an action between the wife and former beneficiaries, will be held to operate as a change of beneficiary in favor of the wife, in the absence of a rule or by-law that the approval of the home office must occur during the lifetime of the insured.

Judgment reversed.

Marshall, C. J., Johnson, Wanamaker and Robinson, JJ., concur.

SECRETARY OF STATE

NEW INCORPORATIONS

The Liberty Specialty Co., Conneaut, \$500. A. C. Tinker, D. M. Tinker, Fred P. Tosch, G. W. Britton, H. G. Kingdom.

The Sterling Stone and Lime Co., Delaware, \$500. H. E. Culbertson, C. M. Herrick, C. C. McCandlish, Wm. W. Bailey.

The Rittenhouse Oil and Gas Co., Austin, \$100,000. J. S. Rittenhouse, Lulu Starr, D. F. Briggs, Losson Day, Stillman Starr.

The Barren River Oil Co., Tippecanoe City, \$100,000. J. F. Studer, C. M. Kemper, J. L. Mitchell, Allen R. Wesler, P. E. Jenkins.

The Union Savings Bank, Bellaire, \$100,000. Charles W. Dickens, William H. Reitz, St. Clair Archer, Charles Wassman, Charles D. Keyser.

The Frederick H. Young Co., Toledo, \$500. Frederick H. Young, Thomas L. Young, J. A. Young, Geo. E. Wise, Stanley J. Hiett.

The People's Auditorium Theater Co., Dayton, \$100,000. Ruth Pansing, L. H. Matken, Albert C. Fowler, Elizabeth Rowland, Eugene H. Barry.

The Mazda Radio Mfg. Co., Cleveland, \$10,000. David E. Green, John H. Kapp, J. R. Fraser, R. Froehlich, James H. Griswold.

The N. Davis Packing Co., Cleveland, \$60,000. Nathan Davis, Ben B. Rosenfeld, J. H. Rose, George Cohen, S. J. Diamond.

The National Radio Mfg. Co., Cincinnati, 10,000. Mark H. Crothaus, I. B. Gilbert, E. Miller, H. Bockhold, Adolph Zuest.

The Sterling Mortgage Co., Cleveland, \$500. J. A. Hearn, S. M. Berg, Roy W. Endress, Jane Blythin, Bertha Schenberg.

The Luse Electric Co., Warren, \$30,000. M. Tayler, Jr., Elizabeth Baldwin, Emma Kistler, Ruth Whitney, Mary Bishop.

The Elf Motor Co., Cleveland, \$500. Wm. A. McAfee, Charles A. Niman, A. B. Oakes, Charles A. Niman, L. Smith, R. C. Schmidt.

The H. Walker Coal Mining Co., Tiltonville, \$200,000. Henry Walker,

Joseph Bainbridge, Harry J. Merkel, Henry G. Verwholt, Raymond B. Ritson.

The Inter-lube Co., Cleveland, \$25,000. A. M. Breen, Ada N. Breen, G. L. Bellinger, John Bellinger.

The Permanent Svgs. & Loan Co., Cleveland, \$1,000,000. F. M. Pritts, R. L. Kornfeld, Frank F. Gentsch, Chas. E. Gleeson, C. E. Terrill.

The Thompson Transportation Co., Mentor Special District, \$200,000. M. S. Thompson, Frederick L. Leckie, Tracy H. Duncan, Joseph A. Schlitz, Les C. Hinslea.

The Muskingum Moline Co., Zanesville, \$10,000. Wilbur Ledman, J. B. Rhodes, Wm. G. Rehl, Jas. V. Ball, F. M. Hook.

The Finley-Smith-Gentsch Co., Mentor Special District, \$50,000. Tracy H. Duncan, Frederick L. Leckie, Joseph A. Schlitz, L. C. Hinslea, M. Glenn.

The Warren People's Market Co., Warren, \$9,000. Chas. L. Wilcox, W. J. Laub, D. H. Hepner, R. C. Ryder, H. L. Gault.

The Perfection Candy Co., Napoleon, \$10,000. Jesse J. Foster, Llyod T. Reed, H. O. Green, Wm. M. Konzen, C. H. Fronce.

The Deegan-Siefert Co., Cleveland, \$50,000. James M. Deegan, John F. Siefert, Richard J. Moriarty, John E. Gallagher, John L. Wiesend.

The Temple Bowling Alley Co., Akron, \$7700. Vernon Maginnis, Charles W. Aston, William M. Weller, R. J. Coleman, Owen M. Roderick.

The Perlick-Gerber Co., Cleveland, \$50,000. Benj. Hartstein, David M. Loeb, A. Barbian, Saul S. Danaceau, Samuel O. Siegel.

The Liberty Motor Bus Co., Cleveland, \$10,000. Gust Gorlas, Wm. L. Taylor, Helen M. Kinsler, Howard M. Jones, James Chakres.

The Atlas Printing Co., Marietta, \$15,000. Frank B. McKinney, Will P. McKinney, John Kaiser, Tom O'Donnell, Wm. H. H. Jett.

The J. S. Armentrout Co., Lima, J. S. Armentrout, B. E. Tabler, L. Barnhorts, Orval McCluer, H. L. Koy, (\$10,000.00).

The American Institute of Agriculture Co., Columbus, \$750. George Livingston, W. M. Kiplinger, Frank M. Raymond, Hugh Huntington, H. C. Ramsower.

The Edwin S. Naly Co., Cleveland, \$50,000. D. R. Brown, L. H. Corlett, H. H. Hartline, C. A. Kaiser, W. D. Tucker, L. T. Wiatrowski.

The Youngstown Lead Coating Co., Youngstown, \$500. G. F. Hammond, R. R. Stephenson, S. B. Mitchell, Ruth Smedley, Pauline Feibus.

The Valley Mortgage Co., Hamilton, \$500. A. D. Stuckey, F. K. Vaughn, J. M. Beler, E. J. Frechtling, Ray Shipman, Thomas M. Regan.

The Prosperity Oil and Gas Co., Ashtabula, \$500. J. M. Poulton, J. E. Pilmer, E. A. Johnson, John French, W. E. Donnelly.

The Charles Russell Co., Cleveland, \$10,000. G. M. Dory, M. T. Gorton, M. B. Vilas, Clinton DeWitt, Dean Lawrence.

The Cuyahoga Sand and Gravel Co., Cleveland, \$50,000. J. M. Truby, Harrison B. McGraw, T. H. Bushnell, T. X. Dunigan, Nelson Rodgers.

The Plotkin Bedding Co., Akron, \$50,000. Simon J. Plotkin, Henry D. Fuerst, Samuel Friedman, Herman B. Harris, J. H. Vineberg.

The Securities Guaranteed Co., Cleveland, \$1,000. E. L. Lansing, C. H. Haag, Geo. A. Griebble, J. A. Phillips, Ross B. Heaton.

The Ogden H. Baumes Co., Cincinnati, \$50,000. C. J. McDiarmid, O. H. Baumes, M. H. Armstrong, Albert N. Siebern, Huber A. Lloyd.

The Slinde Realty Co., Cleveland, \$5,000. Byron D. Kuth, Olin Slinde, F. L. Slinde, P. M. Berry, Margaret Madden.

The Akro-Battery Connection Co., Akron, \$10,000. Thomas J. Palmer, Leroy W. Akins, Thomas D. Wolf, Priscilla Porter Palmer, Clarence L. Petty.

The Peerless Fuel Co., Cincinnati, \$10,000. Charles R. Hall, Harry W. Faught, O. E. Faught, R. Hall, C. Faught.

The Ashtabula Constr. Co., Ashtabula, \$100,000. Clarence R. Moore, F. R. Garver, W. E. Donnelly, E. Benson, E. A. Johnson.

The Youngstown Radio Co., Youngstown, \$75,000. Frances M. VanEsbeck, Jos. L. Heffernan, Geo. C. Stiles, Martin P. Walsh, Jas. Brennan.

The Builders' Realty Co., West Park, \$10,000. H. F. Marlo, Thos. E. Greene, Helen Allen, Fred E. Wirtshafter, John P. Kaline.

The Interstate Bridge Co., Bellaire, \$25,000. J. M. DuBois, J. F. Mellott, R. L. Bowman, W. J. McGraw, John T. Manley.

The North Shaker Boulevard Co., Cleveland, \$500. Josiah Kirby, Henry A. Marting, William L. David, L. B. LeBel, George H. Eichelberger.

The Armo Realty Co., Cincinnati, \$50,000. Herman A. Bayless, George G. McGlaughlin, John R. Schindel, Frank H. Cole, Jr., E. M. Grooms.

The Capital Building Co., Cleveland, \$200,000. Nathan Komito, Roscoe M. Ewing, James L. Lind, O. P. Moon, E. Heasley.

The Hunting Constr. Co., Cleveland, \$500. J. L. Hunting, John W. Reavis, Eben H. Jones, C. F. Reavis, N. J. Webster.

The Hoover Clay Products Co., Mineral City, \$500. Frank E. Baker, Lex Kintner, L. E. Giel, M. B. Pennell, Augustus W. Bell.

The Tilden-Davis Co., Cleveland, \$10,000. John A. Elden, Robert M. Tilden, R. E. Davis, W. R. Davis, R. B. Kyte.

The D. W. Chapman Engineering & Supply Co., Lakewood, \$10,000. D. W. Chapman, Wm. H. Chapman, Mrs. Laura Garmen, Laverne Frueh, Hervey E. Miller.

The D. & M. Improvement Co., Cleveland, \$10,000. Charles Rosenblatt, Herman H. Finkle, Ernest Bernstein, S. J. Deutsch, Alex. Bernstein.

The Monroe Realty Co., Columbus, \$20,000. R. H. Downing, B. S. Cupp, Chas. B. Morrey, Wm. E. Hast, C. A. Valentine.

The Pearl Paint & Stove Co., Cleveland, \$5,000. I. L. Nichols, H. Stewig, S. Waxman, L. Dunmar, O. E. Shaw.

Increases

The Knights of Columbus Bldg. Co., Dayton, \$25,000 to \$300,000.

The Forsythe Coal Co., Cambridge, \$100,000 to \$250,000.

The Richland Shale Brick Co., Mansfield, from \$100,000 to \$200,000.

Decreases

The Sharp Spark Plug Co., Wellington, \$300,000 to \$60,000.

The Euclid-Carnegie Co., Cleveland, \$50,000 to \$500.00.

PUBLIC UTILITIES COMMISSION

No. 2489—In the Matter of the Joint Application of G. J. Burrer and Sons, a Partnership, Operating Under the Firm Name of the Sunbury Electric Light Plant, and The Big Walnut Electric Company for Consent and Authority to Sell and Purchase Property. Prayer Granted.

(Dated April 13, 1922.)

This day, it appearing to the commission from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, this matter came on for consideration upon the joint application of G. J. Burrer and Sons, (a partnership composed of G. J., Earl O., Parker P. and Rudolph Burrer), the owner and operator, under the trade name, Sunbury Electric Light Plant, of the electrical utility at Sunbury, Ohio, and The Big Walnut Electric Company, (a corporation duly organized and existing under and by virtue of the laws of the State of Ohio), asking the consent to and approval, by this commission, of the sale, by said first named applicant, and the purchase by the latter of the said electrical utility property at Sunbury, Ohio.

The commission, being fully advised in the premises, finds from the pleadings and exhibits filed herein and its independent inquiry and investigation thereupon:

That, for purchase and sale purposes, the value of the property, rights and other assets composing the Sunbury Electric Light Plant is not less than the sum of \$9,500.00, and

That the public will, upon such sale and purchase of said public utility property, be furnished adequate service for a reasonable and just rate, rental, toll or charge therefor,

and is satisfied that consent and authority for said sale and purchase of such public utility property should be granted. It is, therefore,

Ordered, That the said G. J., Earl O., Parker P., and Rudolph O. Burrer, composing the partnership, G. J. Burrer and Sons, be, and hereby they are authorized to sell and convey to The Big Walnut Electric Company all the property, rights and other assets composing the electrical utility at Sunbury, Ohio, operated under

the trade name, Sunbury Electric Light Plant; and the said the Big Walnut Electric Company hereby is authorized to purchase said public utility property, and to pay therefor the agreed consideration of \$9,500.00. It is further

Ordered, That, forthwith upon the exercise of the authority herein granted, said applicants file with this commission schedules providing for their respective withdrawal from and inauguration of service within the territory now served by means of said property. It is further

Ordered, That nothing herein shall be construed to be a consent to or approval, by this commission, of any increase in rates or diminution of service within the territory now served by means of said property, nor shall the findings hereinbefore set forth as to rates, service and the value of said property, nor the acquiescence in the passing of said agreed consideration, be binding upon this commission in any future proceeding involving rates and/or service.

J

No. 2491—In the Matter of the Application of The Chardon Telephone Company for Consent and Approval of the Issuance of Bonds. Prayer Granted.

(Dated April 13, 1922.)

This day, it appearing to the commission from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, this matter came on for consideration upon the application of The Chardon Telephone Company, (a corporation duly organized and existing under and by virtue of the laws of the State of Ohio), asking the consent and authority of this commission to issue and dispose of first mortgage six per cent. bonds, dated May 1st, 1922, and to mature serially, beginning May 1st, 1925, of the total principal sum of ten thousand dollars, the proceeds arising from the sale thereof to be used to reimburse applicant's treasury for uncapitalized, capital expenditures, of the alleged sum of \$3,334.61, within the five years next preceding the date of the filing of the application herein, and to provide certain additions, extensions and improvements to its facilities, now under contract or in contemplation, the cost of which is estimated at the sum of \$6,589.00.

The commission, being fully advised in the premises, finds from

the pleadings and exhibits filed herein and its independent inquiry and investigation thereupon:

That, within the five years next preceding the date of the filing of the application herein and to and including February fourteenth, 1922, the applicant actually expended from its treasury for the construction, completion, extension and improvement of its facilities, the sum of \$751.72—(not \$3,334.61, as set forth in the application herein)—none of which was obtained from the issue of stock, bonds, notes or other evidences of indebtedness, and not heretofore capitalized or authorized to be capitalized by order of this commission;

That the applicant now has under contract or in contemplation, certain additions, extensions and improvements to its facilities, the cost of which has been conservatively estimated at the sum of \$6,589.00, and

That the issue of applicant's said first mortgage, six per cent. bonds of the principal sum of \$7,300.00 is reasonably required and the money to be procured thereby is necessary for the reimbursement of its treasury for the aforesaid uncapitalized, capital expenditures therefrom, and for the construction, completion, extension and improvement of its facilities, as aforesaid,

and is satisfied that consent and authority for the issue and disposition of applicant's said first mortgage, six per cent. bonds of the principal sum of seven thousand, three hundred dollars should be granted. It is, therefore,

Ordered, That said The Chardon Telephone Company be, and hereby it is authorized to issue its first mortgage bonds, to be dated May first, 1922, to bear interest at the rate of six per cent. per annum, and to mature serially beginning May 1st, 1925, of the total principal sum of seven thousand, three hundred dollars (\$7,300.00), and that said bonds be sold for the highest price obtainable but not less than the principal amount thereof. It is further

Ordered, That the proceeds arising from the sale of said bonds be, by the applicant, devoted to and used for the following purposes, and no others, to wit:

(a) The reimbursement of applicant's treasury for the sum of \$751.72, not procured by the issue of stock, bonds, notes or other evidences of indebtedness, actually expended therefrom within the five years next preceding the date of the filing of the application herein and to and including the fourteenth day of February, 1922, for the provision of net additions to its plant and facilities, not heretofore capitalized or authorized to be capitalized by order of this commission; and

(b) The payment of the cost of providing and installing the net additions, extensions and improvements to its facilities, described in "Exhibit B" appended to the application herein, which exhibit hereby is made a part of this order by reference, and which cost has been estimated at the sum of \$6,589.00.

It is further

Ordered, That the applicant make verified report to this commission, semi-annually, within fifteen days after the close of each calendar, semi-annual period, of the issue and disposition of said first mortgage bonds and, in reasonable detail, the expenditure of the proceeds thereof pursuant to the terms and conditions of this order. It is further

Ordered, That said application, insofar as it asks consent and authority to issue and dispose of said first mortgage bonds of the additional principal sum of two thousand, seven hundred dollars (\$2,700.00) be, and hereby the same is denied.

*

Advanced Utility Rate Proceeding No. 34—In the Matter of the Proposed Increased Rates of Central Union Telephone Company for Local Exchange Service at Xenia, Ohio. Rates Fixed.

(Dated April 11, 1922.)

This day, this matter came on for further consideration upon the petition and application of The Ohio Bell Telephone Company, (successor of Central Union Telephone Company) asking a rehearing of said matter for the reasons and upon the grounds set forth in its said petition and application, and the argument of counsel.

The commission, being fully advised in the premises, finds that sufficient cause has not been made to appear for a rehearing of said proceeding. It is, therefore,

Ordered, That the said petition and application of The Ohio Bell Telephone Company for a rehearing of this proceeding be, and hereby the same is denied.

To which order of the commission, denying its said petition and application for a rehearing of this proceeding, said The Ohio Bell Telephone Company then excepted and here now excepts, and its exceptions here are noted of record.

Advanced Utility Rate Proceeding No. 82—In the Matter of the Proposed Increased Rates of The Jackson Center Telephone Company, Filed to Become Effective April 1, 1922. Rates Fixed.

(Dated April 11, 1922.)

The commission having heretofore, upon the complaint and protest of certain subscribers for the service of said company, suspended the going into effect of a proposed schedule of new and increased rates, charges, tolls and rentals, filed by The Jackson Center Telephone Company to become effective April 1st, 1922, and entered upon a proceeding and investigation to determine the propriety of said proposed charges, and the efficiency and adequacy of said company's service.

This day, after full hearing, due notice of the time and place of which was given to all parties in interest, this matter came on for consideration upon the pleadings and the evidence.

The commission, being fully advised in the premises, finds:

That the facilities of said company, by reason of improper installation and/or insufficient maintenance, are in a condition which will not permit of the furnishing of adequate service to its subscribers or the public;

That the operating practices of said company are wholly insufficient to provide adequate service, were the facilities in a proper and efficient state;

That the service of said company is inadequate, inefficient and cannot be obtained;

That said service can be improved by certain emergency repairs which should be completed within a period of six weeks, and the institution of a proper code of operating practices, and placed in a state of reasonable efficiency by a more thorough program of improvements, which should be begun immediately upon the completion of the aforesaid emergency repairs and completed in not to exceed four months, and

That, having due regard for the cost of furnishing its said service and the aforesaid inefficiency thereof, said company's said proposed schedule of rates and charges should be rejected without prejudice to any refile of the same following the completion of the aforesaid permanent repairs.

It is, therefore,

Ordered, That said The Jackson Center Telephone Company be, and hereby it is notified, directed and required:

Forthwith, upon the service of this order, to procure the services of a competent and reliable switchboard man (if its present repairman is unable to make such repairs) and to cause its switchboard to be thoroughly cleaned and complete-

DEPARTMENT REPORTS

ly repaired—such repairs to consist, primarily, of the complete restoration of the night circuit alarm; the soldering of all connections; the replacement of all broken or lost parts; the equipment of all cord pairs for double clearing out, and the restoration of the back boards—which work, this commission hereby determines, shall be completed within a period of six weeks;

Forthwith, upon the service of this order, to procure the services of a competent and reliable lineman in addition to its present repairman; provide these employes with a proper conveyance and the necessary materials, and cause them to restore to service all lines which, after a test of the line and the telephone instrument connected thereto, are found to be out of service—which work, this commission hereby determines, shall be completed within a period of six weeks;

Forthwith, upon the service of this order, to thoroughly renovate the room occupied by the central office equipment, and the entrance thereto, marking such entrance with a suitable sign; to establish and hereafter enforce a regulation prohibiting employes from using switchboard as a receptacle for waste paper, wearing apparel and other articles not necessary to telephone operation; to reorganize the operating force by designating one employe to be in charge of and responsible for the conduct of the office, to receive and see that complaints of subscribers are properly recorded and referred to the proper repairman, and thereafter attended to with reasonable despatch, and to install a proper complaint department by providing the aforesaid designated employe with a supply of the following form:

Form.

Date,.....192

Line No.....Tel. No.....

Name

Address

Nature of complaint.....

.....

Reported by.....Time.....

Repairman's Report.

Nature of repairs.....

.....

Date Time.....

Cleared by.....

Printed in duplicate, the copies being of different colors, and establishing the practice of furnishing the repairman with a copy of the complaint by the person recording it, who shall retain the original; requiring the repairman to return his

copy, properly filled out, when the work is completed, to the employe from whom he received it, who, in turn, shall complete the report and file, in its numerical order, the original and duplicate, and

Forthwith, upon the completion of the aforesaid emergency repairs to its outside plant, to patrol all lines, supplying poles, where same are missing, replacing all defective cross-arms and brackets, supplying each contact point with a proper insulator, to which the wires are to have substantial fastening; trimming all interfering branches of trees; pulling slack sufficiently to insure against crossing of circuits in the span, and properly transporting wires to the required intervals to eliminate, insofar as possible, cross talk and inductive interference; and to repair, replace and adjust all mechanical parts of the subscribers' telephones which are defective or not functioning properly, and replace all dry cells that have been in use nine months unless, by inspection, they show visible signs of deterioration, when replacement shall be made regardless of length of service—which work, this commission hereby determines shall be completed within a period of four months from the date of this order.

It is further

Ordered, That said The Jackson Center Telephone Company shall report to this commission the completion of the aforesaid emergency and permanent repair of its facilities and the inauguration of the aforesaid operating reform. It is further

Ordered, That the said proposed schedule, identified as P. U. C. O. No. 1, proffered by said The Jackson Center Telephone Company to become effective April 1st, 1922, be, and hereby the same is rejected, without prejudice to a refiling of said proposed schedule upon the completion of the aforesaid repairs to its facilities and improvement of its service.

3

No. 2490—In the Matter of the Application of The Big Walnut Electric Company for Consent and Authority to Issue and Dispose of Capital Stock. Prayer Granted.

(Dated April 13, 1922.)

This day, it appearing to the commission from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, this matter came on for consideration upon the application of The Big Walnut Electric Company, (a corporation duly

organized and existing under and by virtue of the laws of the State of Ohio), asking the consent and authority of this commission to issue and dispose of its common capital stock of the par value of \$10,000.00 and its six per cent. preferred capital stock of the par value of \$15,000.00; \$9,500.00, par value of said common capital stock to be delivered in consideration for all the property, rights and other assets composing the Sunbury Electric Light Plant, the purchase of which, by the applicant herein from G. J. Burrer and Sons, was duly consented to and authorized by the order, this day made and entered in proceeding No. 2489, and the proceeds arising from the sale of the balance, \$500.00, par value, of said common capital stock and all of said preferred capital stock, to be used:

To pay organization expenses and purchase office equipment	\$ 200.00
To purchase an engine, generator and switchboard....	7,000.00
To pay cost of transportation, drayage and installation of engine, generator and switchboard.....	1,500.00
To provide and install additions and betterments to distribution system.....	6,000.00
To provide a working capital.....	800.00

The Commission, being fully advised in the premises, finds from the pleadings and exhibits filed herein and its independent inquiry and investigation thereupon:

That, for purchase and sale purposes, the value of the property, rights and other assets composing the said Sunbury Electric Light Plant, the purchase of which, by the applicant, was duly consented to and authorized in said proceeding No. 2489, is not less than the sum of \$9,500.00;

That the applicant now has under contract or in contemplation the following additions, extensions and improvements to its plant and facilities, the cost of which has been conservatively estimated at the sums hereinafter set forth:

An engine, generator and switchboard.....	\$7,000.00
Freight, drayage and installation of said engine, generator and switchboard.....	1,500.00
Additions and improvements to distributing system..	6,000.00

That, for and on account of its organization and the equipment of its offices, the applicant has become indebted in the sum of \$200.00;

That, for the maintenance of its operation, the applicant will require a working capital of the sum of \$800.00, and

That the issue of applicant's said common and capital stocks is reasonably required and the money to be procured by the sale of a part of such capital stock, is necessary for the

acquisition of property; the construction, completion, extension and improvement of applicant's facilities; the payment and discharge of its lawful, capital indebtedness, and the maintenance and improvement of its service,

and is satisfied that consent and authority for the issue and disposition of said common and preferred capital stock should be granted. It is, therefore,

Ordered, That said The Big Walnut Electric Company be, and hereby it is authorized to issue its common capital stock of the par value of ten thousand dollars (\$10,000.00) and its six per cent. preferred capital stock of the par value of fifteen thousand dollars (\$15,000.00), and that five hundred dollars (\$500.00), par value of said common capital stock and all of said preferred capital stock be sold for the best price obtainable but not less than the par value thereof. It is further

Ordered, That nine thousand, five hundred dollars, par value, of said common capital stock and the proceeds arising from the sale of said capital stocks, herein authorized to be sold, be devoted to, used and/or expended for the following purposes, and no others, to wit:

\$9,500.00, par value of said common capital stock to be delivered, as fully paid, to G. J. Burrer and Sons, as the consideration for all the property, rights and other assets composing the Sunbury Electric Light Plant, the purchase of which, by the applicant herein, was duly consented to and authorized by the order this day made and entered in proceeding No. 2489:

The proceeds arising from the sale of the balance of said common capital stock and all of said preferred capital stock to be expended:

For the purchase of an engine, generator and switchboard	\$7,000.00
For the payment of freight, drayage and installation of said engine, generator and switchboard.....	1,500.00
For the provision and installation of additions and improvements to applicant's distribution system....	6,000.00
For the payment of organization expenses and purchase of office equipment.....	200.00
For a working capital.....	800.00

It is further

Ordered, That the applicant make verified report to this commission semi-annually, within fifteen days after the close of each calendar, semi-annual period, of the issue and disposition of said capital stocks and, in reasonable detail, the expenditure of the

proceeds of that part thereof which is to be sold, pursuant to the terms and conditions of this order. It is further

Ordered, That the finding hereinbefore set forth as to the value of said property composing the said Sunbury Electric Light Plant shall not be binding upon this commission in any future proceeding involving rates and/or service.

*
J

No. 2383—The Manufacturers' Club of Mansfield, Ohio, Complainant, vs. The Richland Public Service Company, Defendant. Dismissed.

(Dated April 5, 1922.)

Heretofore the complainant, The Manufacturers Club of the City of Mansfield, Ohio, an association of manufacturers of the City of Mansfield, Ohio, on behalf of certain corporations and firms named in the petition herein, filed a petition herein asking for an order revising and reducing the power rates of The Richland Public Service Company of Mansfield, Ohio, as set forth by The Richland Public Service Company in P. U. C. O. No. 3, issued May 10, 1920, and effective June 10, 1920, "Rate L. P." To which petition The Richland Public Service Company filed an answer.

This day came the parties hereto by their respective counsel and represent that the parties hereto and all directly and indirectly interested in this cause have agreed upon new rates and that The Ohio Public Service Company, the successor to The Richland Public Service Company, will file a schedule of rates, instead of and in substitution of "Rate L. P." as found in P. U. C. O. No. 3, issued May 10, 1920, and effective June 10, 1920, and that all the associations and firms represented directly or indirectly by The Manufacturers' Club of the City of Mansfield, Ohio, have consented in writing to such rates and that the same became effective on April 1st, 1922; and that The Ohio Public Service Company, the successor of The Richland Public Service Company, has agreed with said parties to the filing of such schedule and that such rate should become effective on said first day of April, 1922.

Said parties further represent that it is agreed by all parties, directly and indirectly interested in this cause that the proceedings herein be dismissed.

Whereupon the Public Utilities Commission of Ohio coming on to consider the above matter, does find that said representations so made by the parties hereto through their respective counsel, are

true and correct and that all parties in this cause have agreed upon the rates and that The Ohio Public Service Company, the successor to The Richland Public Service Company is to file a new schedule of rates to take the place of and be substituted for "Rate L. P.," P. U. C. O. No. 3, issued May 10, 1920 and effective June 10, 1920, and that all parties have consented that such rate should become effective April 1st, 1922. The commission does, therefore,

Order, That the proceedings herein be dismissed.

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No. 2524—In the Matter of the Application of The Akron, Canton and Youngstown Railway Company for an Order Authorizing the Issue of Said Company's Engine Trust Certificates. Prayer Granted.

(Dated April 17, 1922.)

This day, after due notice to all parties in interest, this matter came on to be heard, and was heard upon the application of The Akron, Canton and Youngstown Railway Company, (a corporation duly organized and existing under and by virtue of the laws of the State of Ohio), asking the consent and authority of this commission to make and enter into an equipment trust agreement, to be known as "Engine Trust of 1921 of The Akron, Canton and Youngstown Railway Company" providing for the purchase and lease to the applicant of nine modernized type 4-6-0 ten-wheel freight locomotives with tenders, the aggregate cost of which will be approximately \$411,000.00, and to cause to be issued and to guarantee the payment of equipment trust certificates to be issued under said equipment trust agreement in the principal amount of not to exceed \$270,000.00, and to enter into an agreement to lease from the trustee thereof the equipment covered by said trust.

The commission, being fully advised in the premises, finds that the making of said equipment trust agreement, the issuing and guaranteeing of the equipment trust certificates to be issued thereunder, and the entering into of agreements to lease from the trustee thereof the equipment covered by said trust, are reasonably required and necessary for the acquisition of equipment and the extension and improvement of applicant's facilities and service, and is satisfied that consent and authority therefor should be granted. It is, therefore,

Ordered, That said The Akron, Canton and Youngstown Railway Company be, and hereby it is authorized:

To make and enter into an equipment trust agreement,

substantially in the form of the draft of said proposed agreement appended to the application herein, and to be known as "Engine Trust of 1921 of The Akron, Canton and Youngstown Railway Company," by and with A. F. Ayers and W. P. Welker, as Vendors, and The Union Trust Company (of Cleveland, Ohio), as trustee, providing for the present use and ultimate ownership, by the applicant, of nine modernized, type 4-6-0, ten-wheel freight locomotives and tenders, of the approximate cost of \$411,000.00;

To make and enter into the necessary agreement of lease (with the privilege of acquiring full title thereto, upon the performance of all the covenants provided in said trust agreement, upon the payment of the sum of one dollar) of the aforesaid nine freight locomotives from the said trustee, and

To guarantee the payment of the principal and interest of not exceeding two hundred and seventy thousand dollars (\$270,000.00) principal amount of equipment trust certificates, to be dated April 1st, 1921, to mature April 1st, 1931, and to bear interest at the rate of seven percentum per annum, payable semi-annually, which said certificates shall be sold for the highest price obtainable but not less than ninety-two (92) percentum of the principal amount thereof.

It is further

Ordered, That any discount arising from the sale of said certificates for less than the principal sum thereof shall be amortized by the applicant pursuant to the rules and regulations heretofore prescribed by this commission. It is further

Ordered, That the authority herein granted shall be exercised only for the purpose of procuring the present use and, upon the performance of all the covenants in said trust agreement provided and the payment of said sum of one dollar, ultimate title, by the applicant, to the aforesaid nine freight locomotives. It is further

Ordered, That the applicant make verified report to this commission of its exercise of the authority herein granted, detailing the amount of such certificates actually issued; the terms and conditions of the sale thereof; the expenditure of such proceeds, and of the delivery of said freight locomotives.

ATTORNEY GENERAL

Where the Juvenile Court Commits a Dependent or Delinquent Child to the Care or Custody of the Department of Public Welfare, and Said Department Assigns Said Child to the Bureau of Juvenile Research for the Purpose of Mental or Physical Examination, the Director of Public Welfare May Then Assign and Transfer Such Child From Said Bureau of Juvenile Research to the Division in the Department of Public Welfare Known as the Division of Charities and No Consent on the Part of said Division of Charities as Such, is Necessary to Such Assignment or Transfer, Nor is the Consent of the Juvenile Court to Such Assignment or Transfer Necessary.

No. 2996—(Opinion Dated April 15, 1922.)

Dr. H. S. MacAyeal, Director, Department of Public Welfare, Columbus, Ohio:

Dear Sir—You recently wrote this department a letter in which you say:

“A difference of opinion seems to have arisen concerning the transfer of children provided for in Sections 1352-3 and 1352-5 so far as such transfers relate to Sections 1841-3 and 1841-4, and we therefore seek your opinion concerning such ‘transfers’ and ‘assignments.’”

You enclose with your letter copies of some correspondence relative to the matter. It appears from this data that the situation you have in mind is this: A child is adjudged a delinquent or a dependent under the provisions of the Juvenile Act. The juvenile court commits said child to the care and custody of the department of public welfare as the legal successor of the Ohio board of administration. Said department of public welfare then assigns the child to the bureau of juvenile research for the purpose of mental and physical examination. The bureau of juvenile research examines the child and recommends that it be placed in a private home.

The question now is whether the director of public welfare has the power to assign and transfer such child from the bureau of juvenile research to the division of charities, without the consent of the juvenile court which made the commitment and also the consent of the division of charities.

In answering the question thus framed, it is believed we will

at the same time answer the specific queries contained in your letter.

The bureau of juvenile research was provided for by H. B. 214, 103 O. L. 175, enacting Sections 1841-1, G. C., to 1841-7, G. C., inclusive.

Section 1841-1, G. C., says:

"All minors who in the judgment of the juvenile court, require state institutional care and guardianship shall be wards of the state, and shall be committed to the care and custody of 'the Ohio board of administration, which board thereupon becomes vested with the sole and exclusive guardianship of such minors.'"

Section 1841-3, G. C., says:

"The 'the Ohio board of administration may assign the children committed to its guardianship to the 'bureau of juvenile research' for the purpose of mental, physical and other examination, inquiry, or treatment for such period of time as such board may deem necessary. Such board may cause any minor in its custody to be removed thereto for observation and a complete report of every such observation shall be made in writing and shall include a record of observation, treatment, medical history, and a recommendation for future treatment, custody and maintenance. The 'the Ohio board of administration' or its duly authorized representatives shall then assign the child to a suitable state institution or place it in a family under such rules and regulations as may be adopted."

The other sections to which your letter refers are sections 1352-3, G. C., and Section 1352-5, G. C.

Section 1352-3, G. C., so far as material here, says:

"The board of state charities shall, when able to do so, receive as its wards such dependent or neglected minors as may be committed to it by the juvenile court. County, district, or semi-public children's homes or any institution entitled to receive children from the juvenile court or the board of administration may, with the consent of the board, transfer to it the guardianship of minor wards of such institutions or board. If such children have been committed to such institutions or to the board of administration by the juvenile court that court must first consent to such transfer."

Section 1352-5, G. C., says:

"The board of state charities may when willing to do so, receive as its wards with all the powers given it by Section 1352-3 of the General Code delinquent children committed to it by a juvenile court or from any institution to which such

children may be committed by the juvenile court or assigned by the board of administration. Such children shall be placed by it in homes in accordance with the provisions of Section 1352-3 of the General Code. Before making such commitment the court may make an order that the parent or parents of such child shall pay the board of state charities, periodically, reasonable sums for the maintenance of such child, which orders, upon the disobedience thereof, may be enforced by attachment as for contempt. If originally committed to such institution by the juvenile court, the court must first consent to the transfer of such child to the board of state charities. Said court may in such cases make an order that the parents or guardians pay for its maintenance in the same manner as if such child had been originally committed to said board.

Provided that if the board of state charities find it impracticable to so place such child, it shall at its discretion have the right to surrender such child to the court, institution or board of administration from which it was received."

As you are aware, the Ohio board of administration and the board of state charities no longer exist. Under the provisions of the new administrative code, both of these agencies are abolished (Section 154-26, G. C.), the powers and duties of the board of administration (except those relating to the purchase of supplies for state institutions under Section 1849, G. C.), being vested in the department of public welfare, said last mentioned department also succeeding to all the powers and duties vested in the board of state charities.

While the Ohio board of administration and the board of state charities are no longer in existence, it does not follow that sections 1352-3, G. C., and 1352-5, G. C., are inoperative. On the contrary, Section 154-24, G. C., as well as Section 154-57, G. C., makes it plain that the powers and duties contained in Sections 1352-3, G. C., and 1352-5, G. C., still survive, but are to be exercised by another agency.

The effect of the administrative code is to require the words "department of public welfare" to be read wherever in a given existing statute the words "the Ohio board of administration" or "board of state charities" occur.

Section 1352-3, G. C., must therefore be read as though it said:

"The department of public welfare shall, when able to do so, receive as its wards such dependent or neglected minors as may be committed to it by the juvenile court. County, district or sem-public children's homes or any institution entitled to receive children from the juvenile court or the department of public welfare, may with the consent of the

department of public welfare, transfer to it (the department of public welfare) the guardianship of minor wards of such institution or department of public welfare. If such children have been committed to such institution or the department of public welfare by the juvenile court that court must first consent to such transfer. The department of public welfare shall thereupon ipso facto become vested with the sole and exclusive guardianship of such child or children. The department of public welfare shall, by its visitors, seek out suitable, permanent homes in private families for such ward * * *."

Section 1352-5, G. C., must also be read as if it said:

"The department of public welfare may when willing to do so, receive as its wards with all the powers given it by Section 1352-3 of the General Code delinquent children committed to it by a juvenile court or from any institution to which such children may be committed by the juvenile court or assigned by the department of public welfare. Such children shall be placed by it in homes in accordance with the provisions of Section 1352-3 of the General Code. Before making such commitment the court may make an order that the parent or parents of such child shall pay the department of public welfare, periodically, reasonable sums for the maintenance of such child, which orders, upon the disobedience thereof, may be enforced by attachment as for contempt. If originally committed to such institution by the juvenile court, the court must first consent to the transfer of such child to the department of public welfare. Said court may in such cases make an order that the parents or guardians pay for its maintenance in the same manner as if such child had been originally committed to said department.

Provided that if the department of public welfare find it impracticable to so place such child, it shall at its discretion have the right to surrender such child to the court, institution or department of public welfare from which it was received."

It must be admitted that the substitution in the two last quoted sections of the phrase "department of public welfare" for the two phrases "board of state charities" and "board of administration," causes said sections to read somewhat awkwardly. For example, the second sentence of Section 1352-3, G. C., is made to read:

"* * * the department of public welfare may, with the consent of the department of public welfare, transfer to the department of public welfare the guardianship of minor wards of * * * the department of public welfare."

Again, the first sentence of Section 1352-5, G. C., is made to read:

"The department of public welfare may, when willing to do so, receive as its wards * * * delinquent children * * * assigned by the department of public welfare."

And the last sentence of Section 1352-5, G. C., is made to read:

"Provided that if the department of public welfare find it impracticable to so place such child, it shall at its discretion have the right to surrender such child to the * * * department of public welfare * * *."

However, it does not appear that the substitution just referred to will in any way interfere with the administration of the duties prescribed by said sections.

It is apparent from reading the correspondence accompanying your letter that those who hold to the view that the division of charities must first consent before a child can be assigned or transferred from the bureau of juvenile research, are assuming that the division of charities is the legal successor of the board of state charities, and therefore that wherever a statute says the consent of the board of state charities is necessary, the result is the consent of the division of charities must now be obtained.

Such an assumption is erroneous. As above pointed out, the legal successor of the board of state charities is not the division of charities, but the department of public welfare. The division of charities is simply an administrative agency in the department of public welfare and established for the doing of particular work therein. Such work is not necessarily the same as that done by the board of state charities, but is whatever the director of the department of public welfare may require. In this connection note that part of Section 154-8, G. C., which says:

" * * * With the approval of the governor, the director of each department shall establish divisions within his department, and distribute the work of the department among such divisions * * *."

The relation of the director of the department of public welfare to that department is indicated by Section 154-3, G. C., which says:

" * * * The department of public welfare, which shall be administered by the director of public welfare, hereby created. The director of each department shall, subject to the provisions of this chapter, exercise the powers and perform the duties vested by law in such department."

It is therefore the view of this department that where the juvenile court commits a dependent or delinquent child to the care and custody of the department of public welfare, and said department

assigns said child to the bureau of juvenile research for the purpose of mental or physical examination, the director of public welfare may then assign and transfer such child from said bureau of juvenile research to the division in the department of public welfare known as the division of charities, and no consent on the part of said division of charities, as such, is necessary to such assignment or transfer.

It is likewise the view of this department that the consent of the juvenile court to such assignment or transfer is also necessary. In such case the original commitment by the court is to the department of public welfare, and, as explained above, the transfer from the bureau of juvenile research to the division of charities is in reality a transfer within the department of public welfare. The child in such a case goes from one agency to another in the same department, just as it might go from one room to another in the same house. In other words, when the court at the time of the original commitment consented to the care and custody of a child by the department of public welfare, further consent is unnecessary so long as said child is cared for by some division or agency in that department.

Under the provisions of Sections 1643, G. C., and 1672, G. C., (108 O. L., Part I, p. 260), the commitment of a child to the care of "an institution, association or state board" may be for either temporary or for permanent care. If for temporary care only, the institution, association or state board shall not place the child in a permanent foster home, but shall keep it in readiness for return to parents or guardian whenever the court shall so direct. In other words, the consent of the committing court is necessary to the permanent placement of a child in a foster home. This statement is, however, in entire harmony with the statement that the juvenile court's consent to the assignment or transfer of a child from the bureau of juvenile research in the department of public welfare to the division of charities in the same department, is unnecessary.

In the last part of your letter you ask:

"Is the law as now constituted such that both dependent and delinquent children may be placed with the division of charities whose visitors in turn must put them in family homes? If so should there be a distinction made as to the acceptance of dependent children and the acceptance of delinquent children? And if so how can the division of charities maintain proper standards of child welfare?"

Since both dependent children and delinquent children may be committed to the department of public welfare, it is clear that said

department may handle the matter of their care and custody through the agency therein known as the division of charities. Your question whether there should be a distinction made between the acceptance of dependent children and the acceptance of delinquent children seems to be a question of departmental policy or administration rather than of law, and it therefore does not seem advisable for this department to express any views thereon. This observation also applies to that part of your query which says, "And if so, how can the division of charities maintain proper standards of child welfare?"

SUPREME COURT

SYLABUS

No. 17025—Elizabeth Landis v. Metropolitan Life Insurance Co. Error to the Court of Appeals of Richland County.

Jones, J.

1. Sections 9410 to 9421, General Code (99 O. L., 139-174), authorize the issuance of life insurance policies in form other than the standard forms prescribed in Sections 9412 to 9417, General Code.

2. The fact that the statutory standard form of policy gives the insured specific optional rights of election after default of premium payment does not preclude a life insurance company from stipulating for a different method for automatic election, upon failure of the owner to act, providing such policy otherwise conforms to Sections 9420 and 9421, General Code.

3. The insured held a policy of life insurance which stipulated that if a lapse occurred after three full years' premiums had been paid, upon surrender of the policy within three months from the due date of premium in default should be entitled to either of the following options: (a) A cash surrender value, (b) paid-up insurance for a reduced amount, (c) extended insurance for a limited term. The policy provided that if the insured did not so surrender his policy for either of such options, his insurance should be continued in force for a reduced amount of paid-up insurance as provided in the second (b) option. The insured, after paying three full years, made default in premium payment and more than three months thereafter died. Held: The optional provisions stipulated in the policy control, and, in case of such default, the insured or his beneficiary is entitled only to have the insurance continued for a reduced amount of non-participating paid-up insurance according to the terms of his policy.

4. The clause in Section 9421 (4),

General Code, providing that no policy shall be issued which contains a provision for "any mode of settlement at maturity of less value than the amount insured on the face of the policy," etc., applies to policies payable at maturity. It does not apply to optional settlements upon surrender after premium default, until after the option has been exercised and the face value fixed anew.

Judgment affirmed.

Marshall, C. J., Johnson, Hough, Wanamaker, Robinson and Matthias, JJ., concur.

MOTION DOCKET

17379—Edward G. King v. Harley McMahan. Motion for an order directing the Court of Appeals of Clark county to certify its record. Overruled.

17388—The American Art Works v. The Keagy & Lear Machine Co. Motion for an order directing the Court of Appeals of Coshocton county to certify its record. Overruled.

17393—Perry Loos et al. v. The Buffalo-Springfield Roller Co. Motion for an order directing the Court of Appeals of Coshocton county to certify its record. Overruled.

17425—James H. McWhorter, et al., as Board of Trustees of Eagle Township, v. I. E. Timmons. Motion for an order directing the Court of Appeals of Vinton county to certify its record. Overruled.

17443—The Central Motor Co. et al. v. Christine Rogers et al. Motion for an order directing the Court of Appeals of Butler county to certify its record. Overruled.

17446—Lydia Westcott et al. v. Leonard Westcott et al. Motion for an order directing the Court of Appeals of Hamilton county to certify its record. Overruled.

17452—Frederick Hueseman v. Henry Fingermeier et al. Motion for an order directing the Court of Appeals of Cuyahoga county to certify its record. Sustained.

17482—Edward D. Cullen, as Vice Mayor, v. State, ex rel. City of Toledo by Frank M. Dotson, Director of Law. Motion by plaintiff to advance Cause No. 17482 on the General Docket. Sustained.

17482—Edward D. Cullen, as Vice Mayor, v. State, ex rel. City of Toledo

by Frank M. Dotson, Director of Law. Motion by plaintiff for stay of execution and to dispense with printing record in Cause No. 17482 on the General Docket. Sustained.

GENERAL DOCKET

16900—Orrison Ellis v. The Prudential Savings Co. et al. Cuyahoga. Judgement affirmed.

17025—Elizabeth Landis v. The Metropolitan Life Ins. Co. Richland. Judgement affirmed.

SECRETARY OF STATE

NEW CORPORATIONS

The Wadsworth Athletic Co., Wadsworth, \$5,000. L. V. Blough, Earl Clark, Claude Edis, Jack Stcler, E. S. Curry, Geo. E. Acker.

The Radio Concert Co., Cleveland, \$500. R. W. Wright, H. Debrin, E. Zalad, Frank S. Taylor, W. H. Haselman.

The Utility Table Co., Ashtabula, \$10,000. E. J. Inman, Irma J. Inman, W. C. Graut, C. H. Anderson, Agnes Anderson.

The Motor Utilities Co., Geneva, Raymond J. Bour, Jr., H. C. Pontius, Ruthe E. Erb, W. L. Gresser, M. E. Taggart.

The James Book Store Co., Cincinnati, \$4,000. David L. James, sr., Davis L. James, jr., Olivia W. James, Lily H. James, Edward M. James.

The Uffelman Baking Co., Cincinnati, \$50,000. Edward L. Uffelman, Christ Uffelman, jr., Bernard Kasper, Christ Uffelman, sr., Geo. F. Eyrich, jr.

The Arnson-Gottlieb Barrel and Cooperage Co., Cleveland, \$40,000. Geo. G. Arnson, Belle Arnson, Yetta Gottlieb, Jack H. Gottlieb.

The Mo-Grite Oil Co., Cleveland, \$15,000. Clarence E. Lee, Edward L. Bertine, Floyd N. Geist, William T. Davis, Edward C. Luehman.

The Toledo Interurban Bus Co., Toledo, \$100,000. Joseph A. Walsh, Edwin G. Stradle, Harold H. Briggs, Gustav L. Solomon, E. C. McAtee.

The Kelley Ice Cream Co., Sandusky, \$500. Carl A. Busch, Susan Busch, E. R. Kelley, M. Estelle Kelly, Nicholas P. Brown.

The Wells-Chief Creamery Co., Upper Sandusky. L. J. Spellerberg, J. G. Wren, C. O. Wells, J. R. Lauber, Kare Betz.

The Renrud Realty Co., Cincinnati, \$5,000. Walter C. Taylor, James B. O'Donnell, John D. Ellis, Alfred T. Geisler, M. A. Wood.

The St. Bernard Realty Co., St. Bernard, \$10,000. R. M. Yegge, V. B. Kirkpatrick, Edward C. Marshall, Elcanon Isaacs, George Stugard.

The Elmore Lumber Co., \$20,000. George G. Powers, Bessie Powers, C.

Tracy LaCost, Alice LaCost, Chas. T. LaCost, sr.

The Automatic Specialties Co., Cleveland, \$500. C. F. Stieh, J. F. Bartelt, D. H. Hoffman, S. L. Klein, B. L. Isaacs.

The Cleveland Business Exchange Co., Cleveland, \$5,000. H. E. Gladden, S. E. Robison, Chas. Stark, J. E. Horton, T. L. Stevens.

The Eggert Auto & Body Co., Cleveland, \$5,000. W. C. Spaulding, H. C. Eggert, R. H. Steinfurth, F. W. Ackerman, W. T. Osborne.

The Pingen Radio Vacuum Tube Co., Toledo, \$10,000. Leo M. Fox, Fred H. Kruse, Mark Winchester, Beth Price, William J. Fritsche.

The Huntabery Co., Akron, \$100,000. Herbert H. Huntsbery, Carl Blattert, Carl M. Myers, George McCammont, Geo. E. Dougherty.

The Hensch Malted Milk Co., Cleveland, \$100,000. E. H. Hensch, B. H. Schwartz, D. A. Thomas, J. Schnuerer, H. A. Rucker.

The Ohio Metal Wheel Co., Waynesburg, \$50,000. T. M. Vaughn, R. B. Wilkinson, Roy R. Finefrock, H. W. Bankert, A. L. Nims.

The Baker Wood Preserving Co., Washington Court House, \$300,000. G. D. Baker, M. S. Daugherty, Will E. Dale, N. P. Clyburn, C. P. Ballard.

The Ft. Loramie Lighting and Power Co., Ft. Loramie, \$50,000. William J. Sherman, B. T. Bull, John J. Borchers, Frances M. Sherman, W. J. Emmons.

The Knox Tire and Rubber Co., Mt. Vernon, \$400,000. H. M. Lybarger, G. H. Jones, M. G. Knoblock, George Ball, J. P. Robson.

The Associated Sales Co., Dayton, \$10,000. L. J. Hunkeler, Fred H. Simonds, C. H. Reiling, Lewis A. Miller, D. V. Davis.

The Geauga County Savings and Loan Co., Chardon, \$500. Franklin Battles, J. V. Burns, J. K. Sheffield, M. J. Loy, Robert S. Parks.

The True American & St. John's Masonic Building Co., Cincinnati, \$15,000. Alexander Williams, J. Lawrence Jones, Jr., H. H. Grandison, Edne L. Townsend, Benj. Laws.

The Tri-State Construction Co., Youngstown, \$10,000. A. E. Lawson, A. A. Durivage, N. A. Rossman, Martin J. J. Finnerty, J. F. Ridel.

The Mercantile Savings and Loan Co., Cleveland, \$1,000,000. A. V. Burnbaum, J. L. Vaughan, T. D. Lamb, C. H. Williams, P. M. Kuederle.

The Comet Oil Co., Dayton, \$10,000. Robert W. Blessing, M. C. Johnston, Wm. Byrne, Harry B. Miller, A. J. Pocock.

The H. & D. Frankel Realty Co., Cleveland, \$25,000. Wm. W. Rosenzweig, F. F. Chapin, Jos. S. Backowski, S. H. Stecker, J. N. Galvin.

The M. Brody Co., Cleveland, \$10,000. Philip Frankel, Frederick Frankel, Morris Boody, Angela Harhaus, A. R. O'Connor.

The Barnesville Fuel Co., Barnesville, \$10,000. Otto Medley, R. J. Foose, O. W. Chalfant, Blanche S. Chalfant, Mary O. Foose.

The Sunnyslope Farm Co., Cincinnati, \$10,000. Thomas H. McCafferty, Wm. J. Mulvihill, Coleman Avery, Howard T. Witherby, Laurence J. Williamson.

The RYD-E-Z Spring Co., Clevel., \$10,000. Andrew J. Barron, Leo. E. Steele, R. R. Robinson, J. C. Yeager, C. Tatgenhorst.

The Powhatan Milling Co., Powhatan Point, \$25,000. A. L. VanDyne, Paul C. Arkle, J. A. Green, A. R. Duval, Arch Brown.

The Cleveland Battery Service Co., Cleveland, \$1,500. W. F. Wedemyer, Emma H. Carpenter, W. H. Shipley, Alfred F. Carpenter, John W. Crossen.

The First Savings and Loan Co., Akron, \$100,000. E. C. Miracle, J. M. Elwood, C. S. Miracle, H. G. Rhodes, P. Z. Winters.

The Lagonda Securities Co., Springfield, \$500. Alex H. Ballard, Hugh Hogan, Ralph W. Temple, Fred Snyder, E. O. Hagan.

Jones Realty Co., Marion, \$150,000. William T. Jones, Karl W. Schell, F. Mitchell Cleary, Hoke Donithen, William J. Fies.

The American Research & Development Co., Dayton, \$100,000. Isaac Warner, H. G. Kemper, I. I. Hauer, H. A. Rietdyk, H. F. Sedgebury.

The Liberty Broom Co., Cleveland, \$15,000. Fritz T. Peterson, George M. Colcher, Elle Peterson, Grace M. Colcher, Louis H. Jay.

The Lakeview Amusement Co., Lakeview, \$10,000. Irvin C. Delscamp, Walter H. Delscamp, Maude Hillman, Harry S. Delscamp, William D. Delscamp.

The Mack Oil Burner Co., Salem, \$50,000. Frank H. McFall, Stephen C. Jessup, H. L. McCarthy, Lewis P. Metger, Wilbur Haifley.

The Portage Bond & Development Co., Akron, \$20,000. Ben W. Holub, A. C. Littell, Ralph G. Thomas, S. D. Stanson, Cyrus Murphy.

The Concrete Surfacing Machinery Co., Cincinnati, \$25,000. Mentor Wetstein, Samuel Dreifus, Alvin Dreifus, Sophie M. Wetstein, Frank J. Hall.

The Perry-Clinton Oil Co., Corning, \$25,000. Edgar Denman, William T. Hermey, J. J. Keller, Elwood Newberry, G. D. Keller.

The U. S. Awning Supply Co., Cleveland, \$10,000. Louis Mintz, Lawrence M. Rich, Sylvester Marx, O. J. Zinner, I. F. Werley.

The Art Stenciling Co., Cleveland, \$10,000. H. S. Gottfried, M. Rinzier, J. L. Goldberg, A. D. Goldberg, A. A. Goldberg.

The Day Radio Co., Cleveland, \$1,000. A. C. Day, A. B. Covert, Herman E. Werner, Frank S. Wendling, William A. Rowley.

The Real Estate Building Co., Cleveland, \$10,000. C. A. Bramson, M. H. Alpert, S. Folb, G. M. Blauman, A. H. Branson.

The Torrenized Estates Co., Cleveland, \$30,000. H. O. Peshek, Joseph A. Wenneman, Joseph H. Wenneman, W. H. Wenneman, C. I. Gates.

The Lucas Home Builders' Co., Toledo, \$10,000. Matthew Kelleher, A. E. Smith, John C. Lewinski, M. J. Tobin, Ernest Reeves.

The A. H. Slusser Investment Co., Canton, \$50,000. E. M. Duckworth, H. B. Webber, Thomas F. Turner, Oscar M. Abt, D. Hall.

The Bayland Development Co., Toledo, \$500. J. S. MacLean, Stephen M. Jokel, B. S. Keller, George A. Ford, A. L. Conn.

The Giant Gas and Oil Co., Ashland, \$30,000. F. W. Kunkel, H. E. Eichelberger, Charles Hoover, N. Straus, R. A. Brown, William Wahl, O. M. Garber.

The F. A. Coleman Co., Cleveland, \$7,500. P. E. Hand, C. G. Johnson, L. O. Ambrose, Spencer A. Coleman, F. A. Coleman.

The Gray's Mayonnaise Co., Toledo, \$5,000. Willow Ford, W. C. Lloyd, Harry E. Gray, Joseph B. Thomas, Harry C. Cotter.

The Baker Motor Co., Zanesville, \$20,000. George Baker, Elson M. Sutton, Anna L. Baker, Edward D. Baker, Mildred Sutton.

The First Mutual Savings & Loan Co., Sidney, \$1,000,000. Thomas Lowe, H. L. Witherow, W. B. Traver, Wm. R. Andres, Francis White.

The Vincent Furniture Co., Cleveland, \$10,000. S. Vincent, L. Dennis, E. R. Walters, H. P. Ord, M. Mergner.

The Edw. J. Goetz Co., Cincinnati, \$10,000. Edward J. Goetz, Louis Goetz, Wm. Pfeiffer, P. Goetz, Frederick B. Sippel, Elizabeth L. Pfeiffer.

The Sullivan Ballard Co., Dayton, \$5,000. H. G. Lee, W. C. Fouch, Parker S. John, W. J. Fitzpatrick, Charlotte Wachter.

The Lorentz Plumbing & Heating Co., Cleveland, \$10,000. George A. Lorentz, George W. Lorentz, Helene Lorentz, F. Wm. Kurzenberger, J. W. Little.

The Wm. Deddens Mfg. Co., Cincinnati, \$10,000. William Deddens, William H. Deddens, C. A. McCann, William Harry Broerman, Frank H. Kunkel.

The Seneca Poultry Co., Fostoria, \$20,000. J. H. Reeves, C. E. Culyer, W. F. Maurer, C. E. Young, A. B. O'Connor.

The Manchester Hotel Co., Middletown, \$75,000. J. A. Aull, J. M. Iseminger, E. T. Gardner, W. M. Renick, Clavin W. Verity.

The Bayonet Spring Coupling Co., Cleveland, \$1,000. Eugene C. Wamelink, Harry J. Wamelink, William K. Gardner, James McSweeney, Fred P. Auxer.

The Hanton Co., Cleveland, \$50,000. H. A. Brereton, F. H. Pelton, Carlton K. Matson, Joseph W. Kennedy, Perry L. Graham.

The O. S. Holmes Building Co., Cleveland, \$5,000. I. M. McDonough, R. L. Haverick, N. J. Horschburgh, John H. Schultz, Quay H. Findley.

The Ben Franklin Radio Supply Co., Cleveland, \$50,000. D. Copland, M. Walters, S. D. Heller, J. W. Goldhamer, Sam Goldhamer.

The Sewell Bros. Co., Cleveland, \$500. F. M. Pritts, R. L. Kornfeld, F. B. Kavanaugh, Beatrice Rawson, Frank F. Gentsch.

The Plymouth Mortgage Bond Co., Cleveland, \$500. James M. McSweeney, Arnold E. Cornell, Walter E. Wiebenson, Howard C. Wiebenson, John J. Wiebenson.

The Logan Engraving Co., Cleveland, \$5,000. Anthony Poss, Kathryn Gibbons, Dave Dolan, Thomas Dolan, S. C. Sheehan.

The Dayton Abbatoir Co., Dayton, \$50,000. Jesse Jacobs, Harry J. Jacobs, Alvin Jacobs, Herwin D. Mayer, Lillie Jacobs.

The Upper Merriman Co., Akron, \$100,000. Herbert L. Wardner, David F. Lesley, Emory T. Hitchcock, L. R. Houston, Cornelius A. Rukamp.

The Wahl Refractory Prod. Co., Fremont, \$10,000. O. C. Wahl, R. C. Loney, A. E. Colbert, R. F. Wahl, Chris Wahl.

The Lomar Mfg. Co., Middletown, \$100,000. C. W. Shartle, r., L. L. Lomar, D. L. Shartle, L. M. Geran, C. W. Shartle.

The Laundry Service Co., Cleveland, \$1,000. C. C. Hague, F. N. Acker, L. A. Tucker, A. P. Mead, H. M. Hubbard.

The Wohlgenuth Bros. Co., Youngstown, \$10,000. Richard Wohlgenuth, Kathryn Davin, James M. Modarelli, Imogene Drury, F. G. Silver.

The Railto Improvement Co., Cleveland, \$5,000. Louis Greenblatt, Robert McDermott, David L. Schiff, Wm. Morrison, Lena Greenblatt.

The Portable Air Tool Co., Cleveland, \$25,000. F. B. Fufts, M. L. Kuno, G. E. Senkbeil, Fred E. Pfeiffer, J. A. MacDonald.

The Superior Investment Co., Cleveland, \$1,000. Ernest Iannetti, Karl Dworkin, Ben G. Ruby, William Morrison, M. Welensky.

The Eastern Ohio Pub. Co., Barnesville, \$10,000. L. J. Taber, W. R. A. Palmer, Edna B. Taber, Margaret Palmer, C. J. Howard.

The Ohio Valley Mortgage Co., Cincinnati, \$50,000. John D. Ellis, M. A. Wood, L. M. Scott, R. C. Cronia, Walter C. Taylor.

The Reserve Laundry Co., Cleveland, \$6,000. John Frank Morse, Leslie B. Gordon, Laurence J. B. Nixon, Alma F. Nixon, Edith P. Gordon.

The Elliott & Morton Typewriter Co., Cleveland, \$1,000,000. Charles L. Anderson, George Crawford Elliott, W. S. Hanna, Hudson T. Morton, Hudson T. Morton, Jr.

PUBLIC UTILITIES COMMISSION

No. 2453—The Ewing Coal Company, et al., Complainants vs. The Hocking Valley Railway Company and The Hocking-Sunday Creek Traction Company, Defendants.

(Dated May 5, 1922.)

Finding

In the southern part of Ohio is located what is called the "Hocking District". The rates on coal from mines in this territory to various destinations both intrastate and interstate are grouped, a blanket rate applying from all mines included therein, with the exception of those located on the line of the defendant, The Hocking-Sunday Creek Traction Company, hereinafter called the Traction Company, The defendant the Hocking Valley Railway Company, hereinafter called the Hocking is a steam railroad and a common carrier engaged in the business of transporting persons and property between points in Ohio and particularly in the transportation of bituminous coal in both intrastate and interstate traffic. The Traction Company is an electrically operated interurban railroad and a common carrier engaged in the business of transporting persons and property between Nelsonville, Ohio, and Athens, Ohio, and intermediate points. It extends in a southeasterly direction from Nelsonville to Athens, distance of fifteen miles, and parallels the Hocking but for almost the entire distance on the opposite side of the Hocking River. There is a physical connection or transfer track between the Hocking and the Traction Company at Nelsonville at which point the Hocking maintains a large yard where coal from the various mines in the district is assembled and made up into trains for shipment beyond. From complainants' mines, which are located on the line of the Traction Company, the rates assessed on coal are made up of the latter's local rate to Nelsonville plus the blanket rate applicable from the Hocking District.

Complainants are corporations, co-partnerships and individuals engaged in the producing and selling of bituminous coal. Their mines are located adjacent to the line of the Traction Company in the vicinity of Nelsonville. By complaint filed December 21, 1921, they allege, in effect, that the failure and refusal of defendants to join in the publication of joint through rates from complainants' mines to destinations in the state of Ohio on the same basis as is

contemporaneously in effect from other points in the Hocking District results in rates which are unjust, unreasonable, unjustly discriminatory and unduly prejudicial. We are asked to establish for the future joint through rates from the complainants' mines to intrastate destinations in Ohio not in excess of the group or blanket rates contemporaneously maintained on like traffic from the mines of its competitors located in the Hocking District and served by the Hocking.

The Hocking assumed the burden of the defense in this case; it challenges the jurisdiction of this Commission to grant the prayer of the petition, claiming that we do not have the authority to order a joint through rate between a steam railroad, such as the Hocking, and a Traction line of the character of the co-defendant, which, it contends, is intended primarily for the purpose of conveying passengers and small packages of express.

Section 540, General Code, is a section authorizing the Commission to establish joint rates, which section provides as follows:

"Whenever railroads refuse or neglect to establish a joint rate or rates for the transportation of persons or property, the commission may, upon notice to the railroads and after opportunity to be heard, fix and establish such joint rate or rates. * * *"

Under Section 501, General Code, the term "railroad" as used, in the chapter relating to public utilities and railroads, and as used in Section 540, General Code, means and embraces interurban railroads.

Section 501, General Code, provides in part as follows:

"The term 'railroad' as used in this chapter shall include all corporations, companies, individuals, * * * which owns, operate, manages or controls a railroad. * * * Such term 'railroad' shall mean and embrace * * * interurban railroad companies, and all duties required of and penalties imposed upon a railroad * * * shall be required of and imposed upon interurban railroad companies. * * *"

Section 614-42, General Code, provides as follows:

"When the tracks of a steam railroad, the tracks of an interurban or suburban railroad cross, connect or intersect and such tracks are of the same gauge, the companies owning such roads may connect the tracks of the roads so connecting, crossing or intersecting, so as to admit of the passage of cars from one road to the other with facility. If any such road or roads fail, neglect or refuse to make such connection, upon complaint of any party authorized by the provisions of this chapter to file complaint, the commission shall proceed to hear and deter-

mine the same in a manner provided for making investigations, upon complaint. If upon such hearing the commission shall find it is practicable and reasonably necessary to accommodate the public to connect such tracks and that when so connected, it will be practicable to transport over such road, cars without endangering the equipment, tracks or appliances of either company, then the commission shall make an order requiring such railroads to make connection, describing the terms and conditions, and apportion the cost thereof between the railroads. When such connection is made, the railroads parties thereto, according to their respective powers, shall afford all reasonable and proper facilities for the interchange of traffic between their respective lines for forwarding and delivering passengers and property, and without unreasonable delay or discrimination shall transfer, switch and deliver cars, freight and passengers, destined to a point on its own connecting lines; but precedence may be given to live stock and perishable freight over other freight. * * *

The Record shows that the Traction Company's equipment consists of 3 passenger cars, 1 combination car equipped to handle freight cars, and some few freight cars for use locally upon its own line; that tracks of the Traction Company are of the same gauge as the Hocking and that the two railroads are actually connected by a transfer track; that the Traction Line is sufficiently ballasted and laid with rails heavy enough to permit of the transportation of loaded coal cars such as ordinarily move over the Hocking; that the Traction Company has freight tariffs on file with this Commission and is actually engaged in transporting bituminous coal and other freight; and that it is practicable to interchange empty and loaded coal cars between the Traction Company and the Hocking and to transport such cars over the line of the Traction Company without endangering the equipment, tracks, or appliances of either company.

Therefore, in view of the above, our right in the case to require the establishment of the through route and joint rates prayed for seems to be clear. However, it is the needs of the shipping and receiving public that the act was intended to serve and the mere fact that one common-carrier railroad has a physical connection with another is not of itself sufficient ground upon which to base an order requiring the establishment of joint rates over those roads. The question of whether or not the establishment of joint rates should be required is one calling for the exercise of our judgment upon the circumstances and conditions of each particular case.

The complainants do not attack the reasonableness per se of the Traction Company's rates or those of the Hocking. The sole basis for the complaint is that the Hocking District group rates should apply from complainants' mines. At present the Traction Company charges from \$8.45 to \$25.50 per car for handling coal shipments from complainants' mines to its connection with the Hocking at Nelsonville and in addition the shipments are subject to the Hocking District rate from Nelsonville to final destination.

Nelsonville is located on the main line of the Hocking near the center of the Hocking Coal District. From this point the Hocking has branch lines running out in various directions to numerous coal mines in the Hocking District which are used chiefly in gathering coal from said mines, assembling the same in the yard at Nelsonville, there to be made up into trains for forwarding to final destination. The mines on said branch lines are located from 6 to 16 miles distant from Nelsonville. Also there are a number of mines on or connected with the main line of the Hocking between Nelsonville and Athens, located from 4 to 13 miles south of Nelsonville—all of which are within the Hocking District and from which the Hocking District group or blanket rates apply. The following table shows the distance in miles from complainants' mines to the transfer track (between the Traction Company and the Hocking at Nelsonville) and their rated daily capacity:

Mine	Distance in Miles	Daily Capacity in Tons
E. L. Juniper Coal Company.....	.06	50
Coe Hollow Mining Company.....	.11	65
Graham and Rosser	.38	50
Vorhees Coal Company	.72	50
Bruce Brothers	1.89	50
C. S. Tedrow No. 2	2.05	70
C. S. Tedrow No. 3	2.33	70
C. S. Tedrow No. 1	2.39	65
New York Coal Co. No. 5.....	3.14	50
The Ewing Coal Company	3.84	75
Total		595

Complainants' mines are located geographically within the Hocking District. If a line were drawn to enclose all mines in this territory now taking the Hocking District rates, the complainants' mines would be the only ones within that area taking higher rates. As previously stated, the Traction Company owns only a few freight cars and they are confined to the local traffic over its own

rails. Empty cars for loading at complainants' mines, for shipment to points beyond Nelsonville, are furnished by the Hocking. For the purpose of car distribution the Hocking has given complainants' mines a daily rating along with other mines in the district. The Hocking places the empty cars on the transfer track in the Nelsonville yard; the Traction Company, with its own power, pulls the empty cars from the transfer track and moves them to complainants' mines where they are spotted for loading upon private sidetracks which are owned and maintained by the complainants, then after the cars are loaded they are switched by the Traction Company, transported to Nelsonville and delivered upon the transfer track. The loaded cars are then removed from the transfer track by the Hocking and made up into trains in the Nelsonville yard along with loads gathered from other points in the district. The service performed by the Traction Company, as above outlined, is similar to that performed by the Hocking in serving mines on its own branch lines, from 6 to 16 miles distant from Nelsonville and for which no charge is made in addition to the district rate applicable from Nelsonville. It is apparent that if that part of the Traction Line, upon which complainants' mines are located, were a branch line of the Hocking, the service now being rendered by the Traction Company would be performed by the Hocking and the Hocking District group rates would apply direct from complainants' mines to the various destinations beyond Nelsonville. Therefore, complainants urge that it is imposing no hardship on the Hocking to require it to publish joint rates with the Traction Company, and grant that company such a fair division of the same as will compensate it for the service it performs. The Hocking offered no evidence showing the average cost or anything pertaining to its operating expense in moving empty cars from Nelsonville to the various mines in the District, then gathering the loaded cars and transporting them to the assembling yard at Nelsonville.

It is asserted by the Hocking that if the Traction Company should be required to publish joint through rates from complainants' mines to points on the Hocking, as prayed for in the petition, that the Traction Company thereby becomes a common carrier of freight, such as coal, and the Hocking will not be required to furnish it empty coal cars, excepting in times of a surplus of equipment, and it can require the Traction Company to furnish its own coal cars just as other steam roads are required to furnish theirs. Suffice to say, the Traction Company is already a common

carrier of freight, such as coal, and the details with respect to equipment and facilities for the interchange of traffic devolve upon the carriers that are parties to the routes and joint rates after they are established. Moreover, we have control over car distribution in the public interest. If there is otherwise sufficient reason for the establishment of joint rates from complainants' mines, we are not persuaded that such rates should be withheld through fear that defendant's car supply may be depleted. The Record shows that under the present arrangements, the Hocking assesses demurrage on all cars delivered to the Traction Company from the time they are placed on the transfer track until they are returned to said track by the Traction Company and the Traction Company in turn charges demurrage to the shipper. It appears, therefore, that the Hocking is being compensated for the use of its equipment.

It is claimed by the Hocking that the Traction Company should be treated as an industry and accorded same treatment that is accorded wagons and auto trucks that haul freight into Nelsonville for shipment beyond. The position taken is technical and insupportable. The Traction Company is not an industry but an interurban railroad and a common carrier. Auto trucks and wagons are not common carriers and are not subject to the regulatory powers of this Commission; besides, the complainants' mines are not wagon mines, they are the same character of mines that are located elsewhere throughout the district on mine sidings connected with the Hocking.

The Hocking calls attention to the fact that the mines in the District which they serve over mine sidings, obtained this service by the execution of contracts under the terms of which the cost of building and maintaining the side tracks was paid by the mine owner or operator. The Hocking contends, if it is required to put in a joint rate with the Traction Company, then the complainants will receive an advantage over other operators in the District because they will have no such sidings to build or to maintain and will be at less expense than other operators who do build and keep up such tracks. The Record shows that complainants' mines are located to the east of the Traction Line, across the public highway and that such mines are connected with the Traction Line by sidetracks were built by the complainants and are maintained at their expense, altho some of the mine tracks connected with the Hocking are of greater length. It appears, therefore, that the complaints have been put to the expense of building mine sidings and that they are maintaining them in the same manner as other

operators in the District. The Hocking Railroad, in this territory, is located approximately one-half mile west of the Traction Line and on the opposite side of the Hocking River. To reach the Hocking with mine sidings most of the complainants would have to build across the main line of the Traction Company, throw up an embankment or erect trestle work across an intervening space of lowlands of approximately half a mile, and build a bridge across the Hocking River which is of considerable width and overflows its banks every spring and fall to such an extent as to cover almost the entire intervening space. The complainants contend, even if these obstacles were not in the way, that they should not be required to leave the common carrier at their very door and build the way to some other railroad, that the object of the law compelling the railroads to make physical connection, is for the very purpose of enabling the shippers located on either to avail themselves of the markets reached by the other to the end that both they and the consuming public may be benefited thereby. In any event they say the cost to them of reaching the Hocking with mine sidings would be prohibitive.

The Hocking points out that both the New York Coal Company and New Pittsburgh Coal Company, built connecting side tracks in this territory extending across the Hocking River and adjacent lowlands to their mines located east of the Traction Line. But the Record shows that these tracks were built some years prior to the advent of the Traction Company and for the purpose of reaching mines with very large production. In full view of the situation, we are not convinced that a through route must be indispensable in order to be considered a public necessity.

While it is shown that the Hocking participates in tariffs naming through joint rates on coal from the Hocking District to destinations located on certain traction lines in Ohio, Michigan and Indiana, Mr. Wasson, General Freight Agent of the Hocking, testified that his company has never made any allowance to or participated in joint rates with any traction company which originates traffic and delivers same to the Hocking.

Pomeroy, Ohio, is a station on the Ohio River Division of the Hocking and the Ohio River Railway and Power Company is an electric line extending through and beyond the city of Pomeroy. The Record shows that the Hocking has leased that portion of the electric line extending from Pomeroy to Minersville, a distance of three or four miles. By virtue of its trackage rights over the electric line, the Hocking publishes its Pomeroy rate on coal from

Minersville destined to various destinations on its line and connections. At present the Hocking cannot operate over its leased portion of the electric line, with steam power, because of the objection of the City of Pomeroy, but is trying to make such arrangements and pending the consummation of such arrangement, it hauls coal from Minersville to Pomeroy with a motor which is rented from the electric line. Coal originating on the Electric Line beyond Minersville is delivered to the Hocking at Minersville but on such shipments the local charge of the electric line is in addition to the rate applicable from Minersville or Pomeroy. Trackage agreements are not to be used as a cloak to cover unjust discrimination but where such arrangements do not result in unjust discrimination they are not to be condemned. It appears that the trackage agreement between the Hocking and the Electric Line was made primarily for the purpose of permitting the Hocking to serve the mines of the Pittsburgh Coal Company which are located at Minersville. It is our view that the service of such mines by the Hocking under trackage agreements is, in practical and legal effect, the substantial equivalent of the extension of its rails to them. A railroad must be allowed some latitude for the exercise of business judgment and discretion in determining the scope of its operations and it cannot be held that because the Hocking thus extended its lines to certain mines, it thereby held itself out to serve all mines similarly situated in regard to its own tracks.

Coal produced by complainants is of the same quality as that mined at other points in the Hocking District. Competition in the sale of coal is keen and complainants can secure no more for their coal than their competitors, consequently complainants must either absorb the difference in freight rates out of their profits or relinquish their trade to their competitors in this field where the production of coal is heavy. Complainants say, because of the rate differential against them, they cannot compete with other shippers except when the demand for coal from the Hocking District is greater than can be supplied by the other mines in said district.

The petitioners are not complaining of the group, as such, nor of the group principle in making freight rates but contend that where a carrier, like the Hocking, elects to blanket a producing territory for rate making purposes, disregarding differences in distance and other factors affecting operating cost, it cannot discriminate by refusing to accord equal treatment to points which are located wholly within the limits of the blanketed territory and

that carriers making effective such a blanket rate cannot be heard to say that it is applicable in general but not applicable from points on a short-line common carrier, such as the Traction Company here involved.

The broad fundamental question involved in this case is whether the Hocking should be permitted to blanket a producing territory and retain for itself the coal market at points on its line for the benefit of mines on its own line to the exclusion of all others, except under a penalty of from \$8.45 to \$25.50 per car. We think this is an exercise of a carrier's rate-making power far too arbitrary and selfish to be permitted under the law. As a matter of sound policy under the law, a carrier is not justified in attempting to restrict its traffic to movement between points on its own line. Through rates are published from coal-producing points on the Hocking to points of consumption on other lines allowing free movement at competitive rates; and, similarly the Hocking should maintain competitive rates from mines on connecting lines wherever the circumstances warrant and it is possible to do so without loss. The policy of the Hocking not to divide its through rates on coal with independent roads, in producing territory, tends to restrict the market for coal originating on such independent roads and was condemned by the Interstate Commerce Commission in *Hughes Creek Coal Company, et al. vs. K. & M. Railway Company, et al.*, 29 I. C., 671, 676.

The Commission cannot establish through routes and joint rates with carriers not parties defendant, but the circumstances and conditions of record seem to warrant the establishment of through routes and joint rates on coal from complainants' mines on the Traction Company to points of destination on the Hocking Valley Railway to which the Hocking District group rates are applicable. Nevertheless account of separate organizations and some additional cost at point of interchange, some recognition must be given to the well-established rule that joint rates over two or more connecting lines may and ought ordinarily to be higher than the rates on one-line movements. Taking all these elements into consideration, a proper adjustment of the matter would seem to require slightly higher rates from mines on line of the Traction Company.

Therefore, upon consideration of the whole record, we are of the opinion and find that the present combination rates on coal from the complainants' mines on the line of the Hocking-Sunday Creek Traction Company to points of destination in Ohio upon

the lines of the Hocking Valley Railway Company, subject complainants' mines to undue prejudice and disadvantage and unduly prefer the mines of their competitors in the Hocking District to the extent that the rates from complainants' mines exceed the group rates contemporaneously maintained from mines on the Hocking Valley Railway in the Hocking District, by more than eight (8) cents per ton.

We further find that said undue prejudice, disadvantage and preference can and should be removed by the defendants establishing joint through rates from complainants' mines on the line of The Hocking-Sunday Creek Traction Company to points of destination in Ohio upon the line of the Hocking Valley Railway Company, such joint rates not to exceed by more than eight (8) cents per ton the group rates contemporaneously maintained from mines on the Hocking Valley Railway in the Hocking District.

An appropriate order will be entered.

Order

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part thereof; and the Commission having found in said report that the present combination rates on coal, in carloads, from Complainants' mines on the line of the Hocking-Sunday Creek Traction Company to points of destination in Ohio upon the line of the Hocking Valley Railway Company, subject complainants' mines to undue prejudice and disadvantage and unduly prefer the mines of their competitors in the Hocking District to the extent that the rates from Complainants' mines exceed or may exceed the group rates contemporaneously maintained on like traffic from mines located on the Hocking Valley in the Hocking District, by more than eight (8) cents per ton:

It is ordered, that the defendants, The Hocking-Sunday Creek Traction Company and The Hocking Valley Railway Company, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before July 1, 1922, and thereafter to abstain, from publishing, demanding, or collecting the rates found in said report to be unduly prejudicial;

It is further ordered, that said defendants, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before July 1, 1922, upon notice to this Commission and to the general public by not less than five days' filing and posting, joint through rates on coal, in carloads, from Complainants' mines on the line of The Hocking-Sunday Creek Traction Company to points of destination in Ohio upon the line of The Hocking Valley Railway Company, such joint rates not to exceed by more than eight (8) cents per ton the group rates contemporaneously maintained from mines on the Hocking Valley Railway in the Hocking District.

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No. 2513—In the Matter of the Joint Application of Frank Capri, Trading as The Mogadore-Akron Bus Line, and C. H. Meier, for Consent to and Approval of the Sale and Purchase of Public Utility Property. Prayer Granted.

(Dated April 20, 1922.)

This day, it appearing to the Commission from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, this matter came on for consideration upon the joint application of Frank Capri, trading as The Mogadore-Akron Bus Line, and C. H. Meier, both of Mogadore, Ohio, praying the consent to and approval, by this Commission, of the sale by the said Frank Capri, and the purchase by the said C. H. Meier, on or about the fifteenth day of February, 1922, of all the property, rights and other assets composing said The Mogadore-Akron Bus Line.

The Commission, being fully advised in the premises, finds from the pleadings and exhibits filed herein and its independent inquiry and investigation thereupon:

That, for purchase and sale purposes, the property, rights and other assets composing the utility known as The Mogadore-Akron Bus Line, are worth the sum of \$7,500.00 and

That the public will, upon such sale and purchase of said public utility property, be furnished adequate service for a reasonable and just rate, rental, toll or charge therefor,

and is satisfied that consent and authority for such sale and purchase of said public utility property should be granted. It is, therefore,

Ordered, That the said Frank Capri, of Mogadore, Ohio, be,

and hereby he is authorized to sell to C. H. Meier, of Mogadore, Ohio, all the property, rights and other assets composing the public utility operated under the trade name, The Mogadore-Akron Bus Line, and consisting, generally of one White Bus, known as No. 7, another known as No. 5, one Chandler Sedan, and such supply of necessary materials and supplies for repairs, and such other assets as are used in operating a bus line; and the said C. H. Meier, hereby is authorized to purchase and acquire the same, and to pay therefor the agreed consideration of \$7,500.00. It is further

Ordered, That, forthwith upon the exercise of the authority herein granted, said applicants file with this Commission schedules providing for their respective withdrawal from and inauguration of service within the territory now served by means of said public utility property. It is further

Ordered, That the findings hereinbefore set forth as to rates, service and the value of said property, and the acquiescence in the passing of said agreed consideration shall not be binding upon this Commission in any future proceeding involving rates and or service, nor shall anything herein be construed to be a consent to or approval by this Commission of any increase in rates or diminution of service within the territory now served by means of said property.

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No. 2518—In the Matter of the Application of The Delaware Water Company for Authority to Issue Securities. Prayer Granted.

(Dated April 27, 1922.)

This day, it appearing to the Commission from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, this matter came on for consideration upon the application of The Delaware Water Company, (a corporation duly organized and existing under and by virtue of the laws of the State of Ohio), asking the consent and authority of this Commission to issue and dispose of its First Mortgage, five per cent. Bonds of the principal sum of \$63,000.00, due August first, 1934, and its seven per cent. preferred capital stock of the par value of \$70,000.00, the proceeds arising from the sale thereof to be used:

To reimburse its treasury for uncapitalized, capital expenditures, \$7,408.75.

To pay and discharge short term notes issued to procure

money with which to provide uncaptalized additions to its facilities, \$25,820.00.

To provide certain additions to its plant and facilities, the cost of which has been estimated at the sum of \$85,600.00.

The Commission, being fully advised in the premises, finds from the pleadings and exhibits filed herein and its independent inquiry and investigation herein:

That, within the five years next proceeding the date of the filing of the application herein and to and including the thirty-first day of December, 1921, the applicant actually expended from its treasury for the construction of additions, extensions and improvements to its facilities, the sum of \$32,836.37, \$25,820.00 of which was procured by the issue and disposition of short-term notes, and the balance of which, \$7,016.37, was not procured by the issue of stock, bonds, notes or any other evidence of indebtedness;

That the applicant now has in contemplation, or under contract, the following additions and improvements to its facilities, the cost of which has been estimated as follows:

New filtering and softening plant, as ordered by the Ohio State Board of Health, with piping, pump and work complete.....	\$77,000.00
Two Hundred new meters.....	2,600.00
New boiler, set and piped.....	3,000.00
Coal unloaded (100 ton capacity) with chute.....	3,000.00

and \$85,600.00

That the issue of applicant's said bonds of the principal sum of \$63,000.00 and its said preferred capital stock of the par value of \$70,000.00 is reasonably required, and the money to be procured thereby, necessary for the reimbursement of its treasury for the aforesaid uncaptalized, capital expenditures therefrom, for the payment and discharge of the aforesaid short-term notes, and for the provision of the aforesaid facilities,

and is satisfied that consent and authority for the issue and disposition of said bonds and preferred capital stock should be granted. It is, therefore,

Ordered, That said The Delaware Water Company be, and hereby it is authorized to issue its First Mortgage, five per cent. Bonds, due August first, 1934, of the principal sum of sixty-three thousand dollars (\$63,000.00) and its seven per cent, preferred capital tsock of the par value of seventy thousand dollars (\$70,000.00), and that said bonds and preferred capital stock be sold for the best prices obtainable but not less than eighty-four (84)

percentum of the principal sum of said bonds not less than ninety (90) percentum of the par value of said preferred capital stock. It is further

Ordered, That any discounts arising from the sale of said bonds and or preferred capital stock for less than the par value principal sum thereof be amortized extinguished pursuant to the rules and regulations heretofore prescribed by this Commission. It is further

Ordered, That the proceeds arising from the sale of said bonds and preferred capital stock be, by the applicant, devoted to and used for the following purposes, and no others, to-wit:

(1) The reimbursement of its treasury for the moneys, not procured by the issue of stock, bonds, notes or other evidences of indebtedness, actually expended therefrom within the five years next proceeding the date of the filing of the application herein and to and including December thirty-first, 1921, for the provision of additions, extensions and improvements to its facilities, \$7,016.37;

(2) The payment and discharge of short-term obligations, created and incurred for and on account of the provision of additions, extensions and improvements to its facilities to and including December thirty-first, 1921, \$25,820.00;

(3) The payment, to the extent of the balance of such proceeds, of the cost of providing the following additions, extensions and improvements to its facilities, viz:

New filtering and softening plant, as ordered by the

Ohio State Board of Health, with piping, pump

and work complete.....\$77,000.00

Two Hundred new meters..... 2,600.00

New boiler, set and piped 3,000.00

Coal unloaded (100 ton capacity) with chute..... 3,000.00

\$85,600.00

It is further

Ordered, That, forthwith upon the payment and discharge of said short-term obligations, the evidences thereof (notes) be, by the applicant, cancelled and destroyed. It is further

Ordered, That the applicant make verified report to this Commission, semiannually, within fifteen days after the close of each calendar, semiannual period, of the issue and disposition of said bonds and preferred capital stock; in reasonable detail, the expenditure of the proceeds thereof, and of the cancellation and destruction of said short-term notes, pursuant to the terms and conditions of this order.

ATTORNEY GENERAL

The Fee of One Dollar Charged by a Clerk of Courts in Ohio for the Execution of Applications for Passports, May Not be Retained by Such Clerk as Personal Remuneration for Services Performed Officially, but Should, Together with the Other Collected Fees of the Office, be Paid Into the County Treasury in Compliance with the Provisions of Section 2983, General Code.

No. 2951.—(Opinion Dated March 28, 1922.)

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

Gentlemen: Receipt is acknowledged of your recent communication which reads as follows:

"You are requested to furnish this department with your written opinion upon the following question:

Question: May a clerk of courts retain for his own use the fee authorized by the regulations of the federal department of state to be charged for taking applications for passports or must such fee be paid into the county treasury under the provisions of Sections 2977 and 2983 of the General Code?

We are enclosing herewith a copy of circular, which at page 11 thereof, contains departmental order No. 171, authorizing the charge of a fee of one dollar by the clerk of a state court for executing applications for passports. Will you kindly return the circular with your opinion."

Federal departmental order No. 171, quoted from page 11 of the pamphlet enclosed provides as follows:

"1. In accordance with that part of Section 1 of the act of June 4, 1920, which reads as follows:

From and after the 1st of July, 1920, there shall be collected and paid into the treasury of the United States quarterly a fee of \$1.00 for executing each application for a passport and \$9.00 for each passport issued to a citizen or person owing allegiance to or entitled to the protection of the United States: Provided, That nothing herein contained shall be construed to limit the right of the secretary of state by regulation to authorize the retention by state officials of the fee of \$1.00 for executing an application for a passport, * * * clerks of state courts authorized to take passport applications are hereby authorized to retain a fee of \$1.00 for executing each application for a passport. They should not charge or retain more than that amount for executing an application for a passport."

Analyzing the regulations provided in the order cited, it is apparent that clerks of state courts authorized to take passport applications are authorized under the regulation to retain a fee of one dollar for executing each application for a passport. The language also concludes that said clerks should not charge or retain more than that amount for executing an application for a passport, and it is thus noted that the force and effect of the word "retain" as used in the first paragraph of the federal order is apparently broadened by the language used in the latter portion of the same, which states, "They should not charge or retain more than that amount for executing an application for a passport." Hence in essence the federal order may be said to provide, that a clerk of a state court is authorized to charge or retain a fee of one dollar for executing an application for a passport.

Section 2977, however, of the General Code of Ohio provides:

"Section 2977. All the fees, costs, percentages, penalties, allowances and other perquisites collected or received by law as compensation for services by a county auditor, county treasurer, probate judge, sheriff, clerk of courts, surveyor or recorder, shall be so received and collected for the sole use of the treasury of the county in which they are elected and shall be held as public moneys belonging to such county and accounted for and paid over as such as hereinafter provided."

Section 2983, G. C., provides:

"2983. Fees paid into county treasury monthly.—On the first business day of each month, and at the end of his term of office, each of such officers shall pay into the county treasury, to the credit of the general county fund, on the warrant of the county auditor, all fees, costs, penalties, percentages, allowances and perquisites of whatever kind collected by his office during the preceding month or part thereof for official services, provided that none of such officers shall collect any fees from the county; and he shall also at the end of each calendar year, make and file a sworn statement with the county commissioners of all fees, costs, penalties, percentages, allowances and perquisites of whatever kind which have been due in his office, and unpaid for more than one year prior to the date such statement is required to be made."

Section 2996, G. C., provides:

"2996. Salaries shall be instead of fees; maximum.—Such salaries shall be instead of all fees, costs, penalties, percentages, allowances and all other perquisites of whatever kind which any of such officials may collect and receive, provided that in no case shall the annual salary paid to any such officer exceed six thousand dollars."

It is noted that the sections quoted supra provide generally for the payment of a salary to the designated county officials as a remuneration for the services they officially perform, and it is expressly and emphatically provided by Sections 2977, and 2996, G. C., that the salary paid the clerk of courts is to be in lieu of all fees and perquisites of the office whatsoever, and that on the first business day of each month said clerk of courts and the other county officials mentioned in Section 2977, G. C., are by the provisions of Section 2983, G. C., required to pay into the county treasury all fees, costs, penalties, percentages, allowances and perquisites of whatever kind collected by the respective offices during the preceding month.

Previous to the enactment of the sections quoted, it was held that clerks of courts of common pleas might lawfully retain one-half of the fees received by them in naturalization cases under the federal act of June 29, 1906, although since the enactment of G. C. 2977 and 2996, he must account to the state for such fees. See *State vs. Horner*, 16, N. P. (N. S.), 449, 25, D. 144. It is thought that the authorities cited discuss fully and amply the same principle as that involved in the one under consideration, and it is believed that in such instances, the policy of the federal government is not to attempt to regulate the internal affairs of the state, or to enact laws in variance with the public policy thereof, but rather that in such cases the federal order considered intends that in a state where a clerk is paid by fees, he may retain the fees he charges for the execution of applications for passports, and in a state where the clerk is paid a salary, he shall charge and receive the fees of a clerk and account for them to the proper public officer according to the law of the state placing him upon a salary basis.

Since therefore the county salary laws in Ohio, as provided by Sections 2977, 2983 and 2996, G. C., specifically require that the salary of the clerk of courts shall be instead or in lieu of all fees, costs, penalties, percentages, allowances and all other perquisites of whatsoever kind such official may collect or receive, it is concluded that the fee of one dollar charged by a clerk of courts in Ohio for the execution of applications for passports, may not be retained by such clerk as personal remuneration for services performed officially, but should, together with the other collected fees of the office be paid into the county treasury in compliance with the provisions of Section 2983 of the General Code.

Upon One Becoming Engaged in the Traffic of Intoxicating Liquor the Lien for the Assessment Provided for by Section 6071 and 6212-33 G. C., With the Penalty Thereon, Immediately Attaches. Under the Provisions of Section 6212-33 C. G., Such Assessment is Payable One-half in June and One-half in December, as Other Taxes are Payable, Excepting in Those Cases in Which Business is Begun After June 20th and Prior to December 20th, in Which Case all of Said Assessment is Payable in December.

No. 3004—(Opinion Dated April 18, 1922.)

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

Gentlemen: Your communication of recent date reads:

"We respectfully request your written opinion upon the following questions in connection with the construction of the provisions of section 6212-33 G. C., 109 O. L. 8.

Question 1. In the following cases when does a liquor assessment of taxes operate as a lien upon the real estate on and in which such business is conducted when certified by the prohibition commissioner through the auditor of state to the county auditor, or when placed upon the liquor duplicate by the county auditor under the provisions of section 6085 General Code:

(a) When such assessment is certified between the 4th Monday of May and the 20th day of June, 1921?

(b) When such assessment is certified between the 20th day of December, 1921, and the 4th Monday in May, 1922?

(c) When such assessment is certified between the 20th day of December, 1921, and the 4th Monday in May, 1922?

Question 2. When are the assessments certified on the above dates due and payable?"

Section 6212-33 G. C., to which you refer, provides:

Such assessment, with any penalty thereon, shall attach and operate as a lien upon the real property on and in which such business is conducted, as of the fourth Monday of May of each year, and shall be paid at the times provided for by the law for the payment of taxes on real or personal property within this state, to-wit: one-half on or before the twentieth day of June, and one-half on or before the twentieth day of December of each year; provided, however, that if the illegal traffic in liquor is commenced after the fourth Monday in May in any year such assessment shall attach and operate as a lien as herein provided upon the date of such commencement, and provided if such traffic is commenced after the twentieth day of June of any year, then the full tax of one

thousand dollars and any penalty thereon shall be paid on the twentieth day of December of the same year; and provided further that such assessment with any penalty thereon shall not attach or operate as a lien upon the real property aforesaid, if the business taxed and for which the assessment is paid, is conducted by a person, corporation or co-partnership without the knowledge or assent of the owner of said real property. Any person who traffics in intoxicating liquors as a beverage shall not be entitled to any rebate or refund under the liquor tax law, except as provided in the preceding section. The payment of such tax shall give no right to engage in the traffic of intoxicating liquors, nor relieve any one from criminal liability."

In considering the history of this legislation, which we may properly do to arrive at the intention of the legislature, we find, as was pointed out in Opinion No. 2926, rendered to your bureau on March 10, 1922, that the section as above quoted was in effect substituted for section 6072, which was repealed by the same act. This section provided as follows:

"Sec. 6072. Such assessment, with any penalty thereon, shall attach and operate as a lien upon the real property on and in which such business is conducted, as of the fourth Monday of May of each year, and shall be paid at the times provided for the payment of taxes on real or personal property within this state, to-wit: one-half on or before the twentieth day of June, and one-half on or before the twentieth day of December of each year; provided, however, that such assessment, with any penalty thereon shall not attach and operate as a lien upon the real property aforesaid, if the business taxed and for which the assessment is paid, is conducted by a person, corporation or co-partnership without the knowledge or assent of the owner of said real property. Any person who traffics in intoxicating liquors as a beverage at retail shall not be entitled to any rebate or refund under the liquor tax law without giving a bond in amount equal to twice the amount of such rebate or refunder, with securities acceptable to the county clerk that he will not traffic in intoxicating liquors without paying the liquor taxes provided by law; such bond shall be filed with the county auditor and certified to the state liquor licensing board."

In comparing the new section with the old provision in the light of the status of the liquor laws, in force at the time of each enactment, it is believed to be clear that in the enactment of section 6072 consideration was given to the fact that there were many who were authorized by law to carry on the business of selling intoxicating liquors, and this section provided for the assess-

ment year and the lien date for convenience, for the same purpose that the lien date for general taxes on real estate is fixed. It further seems to be clear that in the enactment of section 6212-33, the legislature, perhaps by inadvertence, carried into the first sentence the same language which appeared at the beginning of section 6072. However, we cannot speculate as to the intention of the legislature with respect to the language which is unambiguous, and in so far as the same is definite it must be given effect.

It is clear that the assessment year is the same as before, covering the period from the fourth Monday of May to the fourth Monday of May. However, as a matter of practical operation, it will be seen that when one is in such business he will have commenced after the fourth Monday in May, unless the business was begun on the fourth Monday in May, in which case the assessment immediately operates as a lien.

Therefore, in answer to your first inquiry, with all of its branches, you are advised that it is the opinion of this department that the liquor assessment operates as a lien as of the day when business was commenced; and the other provisions of the law, relative to certification and assessment by state and county officials, relate to the method of collection and enforcement of said lien.

In consideringg your second inquiry, it is essential to distinguish the assessment or lien year, as defined in said section 6212-33, from the tax paying periods adopted by reference in the same section. The opening sentence says that such assessment shall be collected as other taxes, "one-half on or before the twentieth day of June, and one-half on or before the twentieth day of December." Keeping in mind the foregoing conclusion that the lien attaches on the day business is begun, it will be observed that it is at once an obligation accruing to the state to be paid in accordance with the provisions of the statute. There being no longer any refund provided for the fractional part of the year, it is evident that no matter when business is begun during the assessment year the tax becomes an obligation. The provision for the collection of the same is made with reference to the tax paying periods.

Therefore, in determining when the same should be paid, we may eliminate from consideration the assessment year. In other words, if one has obligated himself to pay a tax prior to June 20th, one-half of the same will be payable in June and the remaining half in December. If business is commenced between June 20th and December 20th, the same will be collected in full in December. If the business is engaged in after December 20th and prior to June

20th, the tax will be payable one-half in June and one-half in December.

There appears to be no practical reason why one beginning business between the 20th day of June and the 20th day of December should pay all of the assessment in December, and one beginning business after December 20th and prior to June 20th should have the opportunity to pay one-half in June and one-half in December. However, we are not called upon to question the wisdom of the legislature in this respect.

While there are other possible interpretations of section 6212-33, it is believed that the foregoing is the only practical construction that can be given which is clearly sanctioned by the provisions of the section. It is clear, as heretofore pointed out, that the lien attaches on the beginning of business, and that such lien is to be collected as other taxes, one-half in June and one-half in December, excepting in so far as this rule has been expressly modified as to those cases in which business is begun after June 20th and before the ending of the tax paying period in December.

In view of the foregoing discussion, it is the opinion of this department that:

(1) Upon one becoming engaged in the traffic of intoxicating liquors, the lien for the assessment provided for by sections 6071 and 6212-33 G. C., with the penalty thereon, immediately attaches.

(2) Under the provisions of section 6212-33 G. C., such assessment is payable one-half in June and one-half in December, as other taxes are payable, excepting in those cases in which business is begun after June 20th and prior to December 20th, in which case all of said assessment is payable in December.

SECRETARY OF STATE

NEW INCORPORATIONS

The Rowlands Realty Co., Columbus, \$500,000. Charles H. Rowlands, A. D. Rowland, Paul D. Rowlands, Fred W. Rowlands, Thos. F. Carroll.

The Clarksburg Oil and Gas Co., Clarksburg, \$30,000. W. D. Jones, J. B. Willis, Ross Templin, Forman Peck, F. A. Brown.

The Mills Investment Co., Cleveland, \$150,000. F. C. Mills, F. C. Mills, Jr., George M. Mills, J. A. House, May C. Mills.

The H. L. Richeson Co., Dayton, \$500. Harold L. Richeson, Edna S. Richeson, A. A. Schuh, John M. Schuh, Carl J. Schuh.

The Oregon Power Co., Perrysburg, \$25,000. A. B. Harris, Howard Lewis, Milo J. Warner, Charles H. Lemmon, Charles T. Lewis, Jr.

The Fiscal Discount Co., Toledo, \$500. Herman G. Lindenschmitt, Hilda A. Krabach, Albert W. Wagner, Raymond Anderson, Martin Last.

The Vig-Tor Axle Co., Cleveland, \$500. Viggo V. Torbenson, A. L. Kroesen, W. N. Jackson, B. A. Fleming, W. J. Hunter.

The G. & R. Mortgage and Investment Co., Cleveland, \$300,000. Paul S. Gill, Aaron Garber, Harry Robbins, Joshua Flock, Suggs Garber.

The Overmyer Co., Toledo, \$400,000. J. A. Parker, R. F. Cummerow, H. M. Overmyer, Frank E. Miller, H. A. Middleton.

The Handy Macaroni Machine Co., Cleveland, \$10,000. Celeste DiNicola, Flora Miraldi, Nellie Miraldi, Herbert A. Horn, Nicola Gigliotto.

The Social Service Bureau Co., Cleveland, \$10,000. Howell Wright, Fred R. Seibert, Julia M. Seibert, Eleanor M. Carlson, Antoinette Drew.

The Coover Restaurant Co., Findlay, \$5,000. Walter D. Schafer, Byron T. Green, Ray Foy, Philip Roth, W. A. Patterson.

The Lorain Mill & Supply Co., Lorain, \$10,000. Richard W. Mills, W. E. Braun, L. A. Routson, George L. Glitsch, Luella Roth.

The School of The Theatre Co., Cleveland, \$10,000. Glenna Smith

Tinnin, Katherine S. Brown, Elizabeth C. T. Miller, Frank J. Zimmerer, H. E. Parsons.

The Medical Centre Co., Cleveland, \$100,000. David Klein, Nathan Hertsam, W. H. Dettelbach, Harry L. Himmel, Frederick Siegel.

The Ohio Window Cleaning Co., Cleveland, \$500. Louis A. Pittoro, Louis Shaffer, Samuel B. Tilles, Edward P. Corrigan, Harry Shaffer.

The Harry L. Weber Co., Akron, \$50,000. Harry L. Weber, Annie Weber, Morris Rosenfield, John Dudley Head, Rebecca Rosenfield.

The Research Laboratories Co., Dayton, \$25,000. C. E. Cheesman, George T. Matthews, D. T. Matthews, E. P. Matthews, William M. Matthews.

The Community Savings & Loan Co., Lodi, \$500,000. J. H. Fisher, C. M. Crum, Frank Rearden, E. K. Sheffield, Bruce D. Nowling.

The Colonial Cranesahovel Co., Cleveland, \$10,000. Ralph D. Kircher, Mary C. Kircher, Edward G. Last, Jean E. Last, Lionel M. Stern.

The Detroit Gladys Improvement Co., Lakewood, \$500. George Q. Keeley, Earl W. LeFever, W. A. Brassell, Geo. A. Howells, M. A. Friedman.

The Monnor Constr. Co., Youngstown, \$20,000. A. N. Richards, I. G. Monroe, E. G. Nordquist, M. A. Richards, Joseph H. Jones.

The Nelsonville Transportation Co., Nelsonville, \$15,000. Donald M. Sheffield, Ernest C. Cook, James W. Shafer, John H. Saltz, Mabely Haffner.

The Kalendary Co., Cleveland, \$500. C. F. Carroll, Wm. Yondra, Albert Rosen, L. Schnotzer, George Samarlin.

The Nu-Tree-Ment Products Co., Cleveland, \$500. Alvord L. Bishop, J. Janda, Robert Crosser, Edward Blythin, Charles Fiala, Bertha Schenberg.

The L. K. Holding Co., Mentor, \$75,000. R. P. Abbey, W. H. Thomas, H. W. Caldwell, Jr., Helen L. Scanlon, Clara Guenther.

The Seskin Realty Co., Cleveland, \$10,000. Max Seskin, Edward Kahn, S. Folb, L. L. Woldman, E. Creason.

The Paint-Craft Co., Cleveland, \$75,000. John P. Cavano, Gustav W. DeWerth, Fredrick L. Hole, Roy J. Jeffries, J. Rogers Jewitt, M. Korabek.

The Summit Oil and Gas Co., Dayton, \$20,000. John R. Brownell, C. B. Little, W. A. Drake, Elmer E. John, E. N. Shoup.

The Cornell Heights Realty Co., Dayton, \$120,000. Frederick J. Celarius, Carl A. Plocher, Daniel W. Allaman, Walter S. Carr, A. J. Kause.

The Ide Furniture Co., Cleveland, \$500. Joseph G. Ehrlich, M. L. Fisher, Y. Silver, Fannie Gabriel, Saul Blinder.

The Max Holub Realty Co., Akron, \$50,000. Max Holub, David C. Holub, Harry W. Holub, H. H. Stehle, Geo. W. Sieber.

The Talchau Reinberg Co., Cleveland, \$10,000. O. E. Talchau, Nellie B. Schultz, Alfred B. Reinberg, Rose B. Talchau, D. J. Lyons.

The Riggs Tire & Supply Co., Cleveland, \$10,000. I. Brick, E. Williams, M. Junke, I. E. Guentzler, C. L. Bruggemyer.

The South Charleston Creamery Co., S. Charleston, \$2,750.00. E. P. Kelly, Jas. A. Allen, Wade E. Utley, Hugh M. Bennett, R. L. Spencer.

The Hanserber-Marion-Berry Co., Columbus, \$25,000. C. R. Hansberger, F. D. Marion, Jas. A. Beery, E. E. McDonald, E. W. Golay.

The Youngstown Auditorium Co., Cleveland, \$10,000. J. F. Judd, Jr., C. F. McConnell, Harry E. Davis, G. C. Hafley, G. R. Sizer.

The Tri County Svcs. & Loan Co., Fostoria, \$2,000,000. C. W. Barnes, Fred M. Denison, R. V. Steele, E. J. Carlson.

The New Boston Bank Co., New Boston, \$50,000. Dr. A. B. Mills, J. Samuel Davis, J. L. Rickey, Joseph Hladik, Ray Dever, W. E. Newberry.

The Cleveland, Willoughby and Painesville Motor Bus Co., Mentor, \$20,000. A. V. Birnbaum, Samuel D. Dodge, C. H. Williams, J. L. Vaughan, A. V. Smith.

The Telephone Service Co., Wapakoneta, \$236,000. C. A. Stueve, H. W. Hauss, J. L. Snyder, Michael Hauss, Harry G. Fisher.

The Blitzen Mfg. Co., W. Carrollton, \$500. Jos. McNabb, Abram Conover, H. W. Server, W. A. Clark, J. N. Leis, N. W. Cowden.

Brockman Narovec Co., Cleveland, \$50,000. Gertrude Narovec, Harry Narovec, Marie R. Brockman, Elsie Narovec, Jos. Narovec, F. L. Brockman.

The Hungarian News Pub. Co., Cleveland, \$16,500. John Cziraky, Frank Joseph Pokorny, Joseph Bedo, Louis Tarca, Alex Good.

The Amesbury Realty Co., Cleveland, \$500. M. Kuskin, B. Benjamin, Michael Levine, Esther Benjamin, G. E. Buchheit.

The Lincoln Insurance Agency Co., Cleveland, \$10,000. Charles W. Pattison, C. F. Adams, W. E. Watt, Frank S. Taylor, E. Zalad.

The Findlay Transportation Co., Findlay, \$25,000. J. Frank Axline, Chester Pendleton, Esther Cole, Annetta Dorsey, C. L. Rutter.

The Broadway Market Co., Cleveland, \$75,000. A. R. James, H. H. Howard, G. O. Farquharson, H. M. Hubbard, A. P. Mead.

The Youngstown Tire Mfg. Co., Youngstown, \$10,000. C. C. Filson, Donald J. Lynn, Wallace F. Judd, T. Lamar Jackson, Norman A. Emery.

The B. C. Turner Co., Cleveland, \$3,000. Ruth H. Rraser, A. C. Vellam, G. F. Pylick, A. Stadden, H. R. Sup.

The Regent Co., Cleveland, \$10,000. Anna Drozdowicz, N. C. Beckerman, Marie M. Varga, Lillian Lubisky, A. E. Gordon.

The Columbus Ignition Co., Columbus, \$50,000. F. E. Murphy, M. Hubbard, Jr., Clay Dietrich, J. Frank Pease, Robert F. Bingham.

The Wayne Live Stock Co., Wooster, \$3,000. I. W. Henderson, P. F. Swinehart, C. E. McClure, W. E. Jarvis, D. W. Galehouse.

The Western Rubber Mold Co., Akron, \$10,000. Chas. P. Raney, Harry M. Strickland, Martha N. Crumbling, Howard M. Fritchman, Mildred H. Skelton.

The Associated Land Co., Twin Lakes, (Portage Co.), 47,500. N. L. McArthur, H. L. Webb, C. M. Power, Roy H. Smith, W. S. Kent, C. A. Williams, J. G. Getz.

The Certainteed Securities Co., Dayton, \$600. Carl J. Schuh, A. A. Schuh, John M. Schuh, A. M. Brooks, E. L. Brooks.

The Latrobe-Ohio Co., Salineville, \$150,000. Michael Curto, John Lee, Geo. L. Lafferty, Will Hollinger, W. E. Ferrall.

The J. W. Smith Estate Co., Youngstown, \$160,000. William A. Smith, Katherine H. Smith, Caroline Smith, J. Burt Smith, Frank B. Smith.

The Mercantile Adjustment Bureau Co., Cleveland, \$1,000. Earl Clark, I. Brick, I. E. Guentzler, E. Williams, M. Junke.

The Cleveland Wholesalers' Credit Association Co., Cleveland, \$1,000. Earl Clark, I. Brick, I. E. Guentzler, E. Williams, M. Junke.

The American Surplus Co., Cleveland, \$10,000. Julius Bloomberg, Eugene E. Wolf, H. M. Wikisal, K. F. Litman, M. G. Sloss.

The Economy Laundry Co., Portsmouth, \$10,000. Wurtem C. Gorden, Atley H. Glass, Lewis T. Gordon, Harry E. Roadcup, Otho H. Gordon.

The Carroll Livestock Co., Carrollton, \$3,000. M. C. Beamer, J. L. Sniveley, Scott Brandon, Allen E. Yeager, M. E. Foltz.

The Lincoln Chemical Co., Cleveland, \$5,000. Bertha B. Miller, R. M. Miller, N. W. Chamberlain, Woodson Miller, J. F. Britton.

The I. O. O. F. Temple Association, Coshocton, \$75,000. J. D. Lower, Geo. S. Brushwood, E. S. Gaumer, Guy W. Powell, Adolph N. Sahling, H. O. Andrews.

The F. A. Coleman Co., Cleveland, \$500. P. E. Hand, C. G. Johnson, L. O. Ambrose, Spencer A. Coleman, F. A. Coleman.

The Buckeye Cast Stone Co., Painesville, \$75,000. A. C. Knight, Phillip V. Trembley, M. E. Kundmiller, W. R. Pringle, A. L. Becker.

The G-H Rim Co., Akron, \$500. Harold H. Burton, James J. Laughlin, Jr., Donald W. Kling, R. D. Gottfried, Thomas H. Westlake.

The Land Grant Bond & Mortgage Co., Goldwood Township, (Cuyahoga Co.), \$500. Carl J. Schuh, John M. Schuh, A. M. Brooks, A. A. Schuh.

The Standard Saw Mill Co., Cleveland, \$500. Morris L. Fox, Yetta Atkin, Harry Atkin, Katty Fox, G. E. Buchheit.

The Twin Lakes Golf Club Co., Twin Lakes, (Portage Co.), \$2500. N. L. McArthur, H. L. Webb, C. M. Power, Roy H. Smith, C. A. Williams, J. G. Getz.

The Beautex Laboratories Co., Cleveland, \$500. W. K. Sadler, Russell K. Sadler, W. K. Sadler, Jr., E. B. Sadler, H. K. Sadler.

The Whiteville Elevator Co., Metamora, \$10,000. James A. Bohannon, Benj. T. Batch, N. F. Duquette, M. K. Haye, Forrest Jeffries.

The Economy Finance and Security Co., Cleveland, \$20,000. Paul Howland, Gilbert Morgan, Edward Younger, H. L. Deibel, L. M. Sewell.

The Krause-Biederman Co., Cleveland, \$50,000. H. H. Krause, Samuel Biederman, J. S. Antel, Marie Fitzgerald, H. L. Griffin.

The Toledo Conservatory of Fine Arts Co., Toledo, \$20,000. Geo. B. Orwig, Stuart S. Wall, Frank E. Miller, Marie Schmidt, Bradford Mills.

The Edward-Johns Co., Cleveland, \$10,000. G. E. Glatthar, Geo. J. Lechner, Charles S. Wachner, James P. Hunter, M. C. Egan.

The Pierpont Kosher Meat Market and Grocery Co., Cleveland, \$5,000. Bernard J. Smolin, Myron M. Rabruck, J. Goldman, Joseph B. Smolin, Arthur P. Gustafson.

The J. H. Bottomy Securities Co., Massillon, \$10,000. John H. Bottomy, J. Frank Booth, Septimus H. Griffiths, Samuel G. Edgar, Reuben F. Maier.

The Standard Bakeries Co., Cincinnati, \$50,000. John A. Payne, Jno. C. Hermann, J. Adams Payne, Fred Weiland, Herbert E. Ritchie.

The Market Garage Co., Cleveland, \$5,000. C. S. Thompson, C. F. McConnell, Chas. L. Wessel, Victor J. Conrad, M. L. Dilley.

Increases

The Geo. D. Harter Bank, Canton, from \$600,000 to \$1,000,000.00.

The Commercial Mtg. Co., Columbus, from \$100,000 to \$150,000.

The D. O. Summers Co., Cleveland, from \$50,000 to \$150,000.

The Nifty Jar and Cooker Mfg. Co., Cincinnati, from \$20,000 to \$70,000.

The Dole Mfg. Co., Toledo, from \$20,000 to \$30,000.

The United Food Prod. Mfg. Co., Toledo, from \$500,000 to \$1,000.

The Harzee Mfg. Co., Cleveland, from \$125,000 to \$1,250.

The Walter-Wallingford Coal Co., Cincinnati, from \$100,000 to \$20,000.

The Syndicate Investment Co., Cleveland, from \$20,000 to \$350,000.

The Scalp-Germicide Co., Youngstown, from \$5,000 to \$15,000.

Decrease

The Charles Boldt Paper Mills Co., Cincinnati, \$1,500,000 to \$750,000.

PUBLIC UTILITIES COMMISSION

I. & S. No. 64—In re. Protest Against Increased Intra-Plant, Intra-Terminal and Inter-Terminal Charges at Ironton, Ohio, as Shown in Supplement No. 4, to N. & W. Railway Freight Tariff, 15494-C, Ohio No. 1787, Published to Become Effective March 11, 1922.

(Dated May 4, 1922.)

Finding

By schedules filed to become effective March 11, 1922, the respondent, Norfolk & Western Railway Company, proposed (1) to increase its charge for transporting coke between private or assigned sidings within the switching limits of the City of Ironton, from \$7.00 per car to 42c per ton, minimum weight per car 25 net tons, and (2) to increase its intra-plant charge for transporting coke between points within the confines of the Ironton Iron Company plant of The Marling Iron and Steel Company at Ironton from \$3.50 per car to 42c per ton, minimum weight per car 25 net tons. Upon protest of the Ironton Solvay Coke Company and others, the schedules were suspended until April 10, 1922, and later until May 10, 1922. It is alleged that the foregoing proposed increased rates are unjust and unreasonable in and of themselves and unjustly discriminatory. The complaint having been filed before the effective date of the schedules, the burden of proof is upon respondent to show that such increased rates are just and reasonable, and with this status established the matter proceeded to hearing and argument, and is now ready for determination.

Respondent's representative stated that the intra-plant charge of 42c per ton for movements at the Ironton Iron Company plant of the Marting Steel & Iron Company, was included in the suspended schedules through inadvertence and that the rate of \$3.50 per car now in effect for this service, will be continued. Therefore there remains for consideration only one question, namely: Is the proposed increased rate for transporting coke in carloads between private or assigned sidings within the Ironton switching district justified?

The protestants, other than the Ironton Solvay Coke Company, are;

Belfont Iron Works Company.
The Kelly Nail and Iron Company.
The Marting Iron & Steel Company.
The Union Furnace Company.

all of which operate blast furnaces for the manufacture of pig iron and under normal conditions purchase large quantities of coke from the Ironton Solvay Coke Company. The plant of the Ironton Solvay Coke Company, hereinafter called the Coke Plant, is located near the eastern terminus of the Ironton switching district and the four iron furnaces above mentioned are located within said district at distances ranging from one-half to three miles west of the coke plant. It is testified that 65% of the coke shipments, herein involved, are consigned to furnaces within one mile of the coke plant.

Prior to June 25, 1918, the published rate covering the movements in question, was \$4.00 per car. The present rate of \$7.00 per car includes an increase of 25% under General Order 28 in connection with freight rate authority No. 1887 of the United States Railroad Administration, plus an increase of 40% under Interstate Commerce Commission Ex Parte 74, Ohio 885.

Ashland, Kentucky is on the south bank of the Ohio River and Ironton, Ohio is on the north bank, a little west of Ashland. At Ashland there is a byproduct coke plant (similar to the one at Ironton) and two blast furnaces (engaged in the manufacture of pig iron), all located within the switching limits of the city of Ashland. These industries are served by the Ashland Coal and Iron Railway Company which publishes a rate of 42c per net ton, minimum weight 25 tons per car, for transporting coke from the coke plant to the furnaces at that point. It is claimed by respondent that the rates, here involved, should be on a parity with those at Ashland because the Ironton and Ashland furnaces are all located in the same general district and their product comes into direct competition. A similar proposition was presented to us four years ago in our I. & S. Docket 37-A, when the respondent, by tariff schedule published to become effective May 21, 1918, attempted to increase its rate for transporting coke within the switching limits of the city of Ironton from \$4.00 per car to 20c per ton, the rate contemporaneously in effect on the A. C. & I. Railway at Ashland, Kentucky being 20c per ton. In that case the Commission found that the increased rate was not justified and prescribed in lieu thereof a rate of 15c per ton, minimum \$5.00 per car. It appears, however, that the rate thus established was not published because the railroads at the time were under Federal Control and the Commission's order conflicted with General Order 28 issued by the Director General of Railroads.

Defendant's Exhibit No. 3 is a statement showing road-haul rates on coke between various points in Eastern Ohio, such rates

ranging from 70 to 84c per ton for distances from 2 to 13 miles. These rates, in our opinion, are not fairly comparable with the rates involved in this proceeding because there is a substantial difference between the ordinary road-haul service and the intra-city service herein under consideration. Road-haul service involves: (a) Spotting of empty cars, gathering of the loads and the making up of trains by yard engines and crews at the original point of shipment; (b) haulage by main line engines and crews from point of origin to destination; (c) and the breaking up of trains and spotting of the loaded cars upon private sidings or team tracks by yard engines and crews at point of destination. In the instant case, the main line engine and crew is entirely eliminated, the whole service being performed by yard engines and yard crews within the switching district and incorporated limits of a single municipality. The same criticism attaches to defendant's Exhibit No. 2 which is a digest of opinions rendered by the Interstate Commerce Commission regarding road-haul rates on coke versus coal and likewise the same reasoning applies, generally speaking, to Witness Wilson's testimony concerning the rates on slag and coal as prescribed by this Commission in Dockets 2056 and 2329.

Respondent compares the proposed charge with its charge of 42c per ton for transporting freight of all kinds in carload lots between firms or individuals on the Norfolk & Western within the switching limits of the City of Columbus, also with a charge of 42c per ton published by the Pennsylvania Railroad for moving coke within switching districts at Bellaire, Martins Ferry, Mingo Junction and Steubenville, Ohio. However, these comparisons are without probative value in the absence of any showing as to the operating or traffic conditions under which the service is performed at those points.

Respondent cites note 6 of N. & W. tariff 15494-C, Ohio 1787, which names rate of 42c per ton on clay, limestone, coal and sand from the works of the Alpha Portland Cement Company and Tri-state Improvement Company, which are located within the Ironton switching district, to firms, individuals and industries located on the Norfolk & Western tracks at Ironton. On the other hand protestants point out that with the exception of the particular commodities mentioned in Note 6 of N. & W. tariff 15494-C, Ohio 1787, the defendant maintains a flat rate of \$7.00 per car for transporting cement and other commodities between the plants above mentioned and private or assigned sidings within the Ironton Switching District. The Record shows, with the exceptions above noted, that the

respondent now charges a flat rate of \$7.00 per car for transporting all commodities between private or assigned sidings including connection with the D. T. & I. Railroad, within the Ironton switching district and it does not propose to increase this charge except as to coke. Furthermore, it appears that coke is the predominant traffic handled locally by respondent within said district.

Protestants' Exhibit No. 4 shows that the respondent publishes a flat rate of \$7.00 per car, without restrictions, for transporting all commodities within the switching districts of Chillicothe, Circleville, Hillsboro, Portsmouth, Sardinia, Sciotoville and Waverly, Ohio.

Protestants' Exhibit No. 7 is a summary of several other exhibits. It shows that 47 communities on the N. & W. have specific Norfolk & Western intra-terminal rates; 2 of those communities only are restricted to rates higher than \$7.00 per car; 4 of them have some rates higher than \$7.00 and some rates of \$7.00 per car and less; 45 have rates of \$7.00 per car and less, and only 4 of those 45 also have higher rates.

Protestants' Exhibit 4 and 7 are subject to the same criticism as were defendant's exhibits since they do not show the circumstances and conditions surrounding the transportation movements at the various points and the information is not disclosed by the Record.

The following taken from Protestants' Exhibit No. 9 shows the amount of coke handled by respondent from the coke plant to the four furnaces in Ironton during the month of October, 1920, which month was selected because of being representative:

Name of Furnace	Coke Shipment in Tons
The Ironton Iron Company	10166.35
The Kelly Nail & Iron Company	1409.50
The Union Furnace Company	4855.75
Belfont Iron Works Company	3424.25
Total	19855.85

The Record shows that the coke plant performs its intra-plant switching with its locomotive; that it receives and delivers cars to respondent over an interchange track, thus relieving respondent of the expense involved in spotting and gathering cars within the confines of its plant; that the normal coke movement, herein involved, is approximately 20 cars per day which are switched out by the coke company with its own power and placed on the interchange track in one cut ready to be pulled by respondent's yard engine; and that

inbound cars loaded with coal are utilized for outbound coke loading.

The evidence offered in justification of the proposed increased charge is meager, it is hardly more than an expressed desire to secure uniformity in the intra-terminal coke rates as between Ashland, Kentucky and Ironton, Ohio. There are, doubtless, cases where increased rates may be proper for this purpose, but it is to be remembered that uniformity may be secured in many cases by reduced rates as well as by increased rates. The mere fact that a relation of rates requires readjustment in the interest of uniformity is not proof that rates increased to the level of the relatively higher rates are reasonable.

Defendant made no attempt to show the cost of the service. In our opinion weight must be given to the fact that in normal times the movements are regular and of considerable volume; that the movements are short and would be shorter but for conditions for which protestants are in no way responsible; and that the proposed charge is in excess of that maintained by respondent for transporting other commodities within the same switching district.

We find that respondent has not justified the proposed increased charge. An order will be entered requiring cancellation of the schedules under suspension and discontinuing this proceeding.

Order.

It appearing, That by order dated February 10, 1922, the Commission entered upon a hearing concerning the lawfulness of the rates, charges, regulations, and practices stated in the schedules enumerated and described in said order, and suspended the operation of said schedules until April 10, 1922, and subsequently ordered that they be further suspended until May 10, 1922;

It further appearing, That a full investigation of the matters matters and things involved has been had, and the Commission, on the date hereof, has made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof;

It is ordered, That the respondent herein, Norfolk and Western Railway Company, be, and it is hereby, notified and required to cancel said schedules on or before May 9, 1922, upon notice to this Commission and to the general public by not less than one day's filing and posting in the manner prescribed by law, and that this proceeding be thereupon discontinued.

In the Matter of the Rejection of The Hardin-Wyandot Lighting Company's Proposed Schedule Designated P. U. C. O. No. 2, Providing Certain Increased Rates and Charges for Natural Gas Service Furnished in the City of Kenton, Ohio, Proffered for Filing to Become Effective April 30, 1922.

(Dated April 26, 1922.)

Whereas, The Hardin-Wyandot Lighting Company, under date of March 30, 1922, proffered for filing with this Commission a proposed schedule designated P. U. C. O. No. 2, providing certain increased rates and charges for natural gas service in the City of Kenton, Ohio, to become effective April 30, 1922; and

Whereas, It is apparent that the imposing and collecting of such proposed increased rates and charges would be in violation of Section 614-45 of the General Code of Ohio, in that such rates and charges do not conform to the rates and charges provided in Ordinance No. 507, passed by the council of the City of Kenton, Ohio, under date of March 23, 1922, from which ordinance said The Hardin-Wyandot Lighting Company on the 28th, day of March, 1922, appealed to the Commission; and

Whereas, In a communication dated April 12, 1922, Counsel for said The Hardin-Wyandot Lighting Company, was given notice that said schedule P. U. C. O. No. 2 would be rejected unless good cause be shown why such action should not be taken; and

Whereas, Such good cause has not been made to appear; therefore, be it

Ordered, That said proposed schedule P. U. C. O. No. 2, providing certain increased rates and charges for natural gas service furnished in the City of Kenton, Ohio, proffered by said The Hardin-Wyandot Lighting Company to become effective April 30, 1922, be, and hereby it is rejected.

ATTORNEY GENERAL

Except in a Centralized School District (7749 G. C.) the Transportation of an Elementary Pupil to School by a Board of Education is Optional (7731 G. C.) Unless Such Pupil has Been Assigned to a School "Without the District" Distant More Than Two Miles From the Residence of the Child (7764 G. C.)—Where a Local Board of Education Decides in its Discretion That the Transportation of an Elementary Pupil Residing More Than Two Miles From a School Within the District is "Unnecessary", Such Judgment of the Local Board Must be Confirmed by the County Board of Education, or the Probate Court, as the Case May be; and if Not so Confirmed the Transportation of an Elementary Pupil Resident More Than Two Miles From School is Mandatory (7731 G. C.)—The Transportation of Elementary Pupils Residing Two Miles or Less From School is Optional With a Board of Education (7731) Except in a Centralized School District (7749 G. C.)—The Transportation of a Pupil Eligible to High School by a Board of Education is Optional (7731 G. C.) Unless (a) The Pupil Resides in a District as Described in 7749 G. C., or (b) Has Been Assigned to a High School "Without the District" and Distant More Than Four Miles From the Residence of the Pupil, (7764 G. C.)—Every Board of Education Must Provide "Work in High School Branches" at Some School Within Four Miles of the Residence of any Pupil Eligible to High School (7764-1 G. C.); but if the Local Board Rather Than Furnish Such Work in its Local District Desired (a) to Provide Transportation to any Recognized High School, or (b) pay for Transportation Under 7731-4 G. C. Instead of Directly Providing it, or (c) Pay for the Pupil's Room and Board, or Part of Same, in an Amount Less Than it Would Cost as Provided in 7749-2 G. C., the Local Board has the Privilege or Option of Thus Furnishing "High School Work."

No. 2949—(Opinion Dated March 28, 1922.)

Hon. C. A. Radcliffe, Prosecuting Attorney, Lancaster, Ohio.

Dear Sir: Acknowledgment is made of the receipt of your request for the opinion of this department upon the following questions:

1. In a rural school in the county school district of a given township an elementary school pupil of compulsory school age lives slightly more than two miles from the school

to which such child is assigned. Transportation of such child is demanded by the parent. The township board of education, acting under 7731 G. C., as amended in 109 O. L., 289, refused to furnish or pay for said transportation, the local board finding 'such transportation is unnecessary'. Said action of the local board being confirmed by the judgment of the county board of education. In such case is transportation or payment for same mandatory or optional?

2. A child of compulsory school age having completed the course in his elementary school, residing in a county school district of a given township, is assigned within the district to a high school more than four miles from such child. Transportation of such child is demanded of the local board of such township. Such local board finds that such transportation is 'unnecessary' and that transportation of pupils who are pursuing high school branches is optional with the board (7731 G. C., as amended 109 O. L., 289) and said local board exercising such option refuses to transport such child, which ruling was confirmed by the judgment of the county board of education. What is the status of such child as regards transportation?

3. A child of compulsory school age having completed the course in his elementary school, residing in a county school district of a given township, is assigned without the district to a high school more than four miles from such child. Transportation of such child is demanded of the local board of such township. Such local board finds that such transportation is 'unnecessary' and that transportation of pupils who are pursuing high school branches is optional with the board (7731 G. C. as amended 109 O. L., 289), and said local board exercising such option refuses to transport such child, which ruling was confirmed by the judgment of the county board of education. What is the status of such child as regards transportation?

4. Can section 7731 G. C. (as amended 109 O. L., 289) be harmonized with section 7764 G. C. and section 7764-1 G. C.?"

As your questions are based upon the requirements appearing in the new compulsory education law (H. B. 111), a very brief synopsis of that long act will be given (for future reference), as it may bear on the question of schooling up to eighteen years.

The ages for compulsory school attendance are 6 to 18 years, but a local board of education may by resolution change this to 7 to 18 years. A child who is 6 years of age (or 7 in case the board sets the age at 7), after the beginning of a semester, may not be required until the beginning of the following semester. See Section 7763 (end) and Section 7681. A child may be released from school on an age and schooling certificate after reaching the age of 16

unless he has failed to complete the seventh grade by that age. It is only during employment, however, that the child is excused from school (Sec. 7766), but a graduate of a first grade high school need not attend school further (Sec. 7764-2). Children whose bodily condition does not enable them to attend school may be excused by the superintendent, but the disability must be fully proved and when able the child must enter or return to school. A child can be excused on the ground of physical or mental disability only by the superintendent of the public schools (or person designated by him). (See Sec. 7763) However, all children who are blind, deaf or crippled, or who are of defective mentality, should be sent to schools suited to them. (See Sec. 7763-5). Children may be assigned by the juvenile court to suitable institutions. (See Sec. 7780 and Sec. 7781). In case a child is supposed to be of seriously defective mentality, the services of the State Bureau of Juvenile Research should be asked that advice as to his education and care may be secured. Children need not be admitted at five, though the school census includes children from 5 to 18 years of age. (Sec. 7794). This contemplates kindergartens for those five years of age. However, the schools are required by law to be free only to those from 6 to 21 years of age (Sec. 7681). Children must attend the entire year, for the law provides that a child must enter within the first week of the school term or within one week from the date of his moving to the district. The attendance must be for the full time the school attended is in session. (Sec. 7763, first paragraph). A child actually resident in the state must attend school whether his parents are residents or not. (Sec. 7775 and Sec. 7778). The board of education may aid an indigent child (Sec. 7777), the intent being that no child should be deprived of education because of poverty.

The obligation that a child shall attend school rests primarily on the parents of the child and prosecution for failure of a child to attend school is primarily instituted against the parents (Sections 7762, 7763 first paragraph and 7773), but if a child, contrary to the directions of his parents, fails to attend school, he may be prosecuted as a delinquent child (Sec. 7762-6 and 7774). The child shall attend the school and grade to which he is assigned by the superintendent of schools, or if he attends a parochial school, the grade to which he is assigned by the principal thereof. In any case the grade or class must be suited to his age and state of advancement. (Sec. 7762 and Sec. 7764). The completion of the grades does not excuse a child from further school attendance for he may

be assigned by the superintendent to further study in the elementary school or to a high school.

If there is no high school in a given rural district, the child may be assigned to a high school within four miles in another district, and the board of education must pay his tuition. The same is true if the high school is in another district and more than four miles distant from his residence, except that the child may not be required to attend the high school in that case unless his transportation or board in lieu thereof is provided. See sec. 7764, sec. 7749-1 and sec. 7749-2. If high school training is not thus provided any child, the board in his district must provide work in high school branches in connection with some elementary school, or otherwise, within four miles of the child's residence. (Sec. 7764-1).

Prior to the enactment of House Bill 216 by the present General Assembly, there was no authority for a board of education in a rural district to transport its high school pupils outside of its own district. This authority, however, has now been given to boards of education under the provisions of section 7749-2 but there is no mandate therein that the board of education is required to furnish such transportation of a high school pupil to the high school outside the district where the pupil resides. House Bill 216 (sec. 7749-2 G. C.) leaves it optional with the board of education not maintaining a high school as to whether the board shall transport the high school pupils outside of the district where they reside. Similarly this authorization "shall have power to furnish such transportation" appears also in section 7764 G. C., *supra*, as enacted in House Bill 111, but section 7764-1 G. C., apparently goes further than either of the above two cited sections, for it says that boards of education shall provide work in high school branches for each child of compulsory school age (up to 18 years) who has finished the ordinary grade school curriculum. This means that "work in high school branches" must be available to children up to eighteen years of age, unless the child has been graduated from a high school of the first grade, as provided in section 7764-2 G. C., when such child "shall not be required to longer attend school."

"The positive duty is cast upon each board of education by section 7764-1 to provide work in high school branches; the board has provided work in high school branches in its district when it operates a second or third grade high school which teaches the 'high school branches, as mentioned in 7648 (7649) G. C.' The General Assembly has not said in 7764-1 G. C. the manner in which such 'work in high school branches' shall be

provided, nor has it said the amount of such work to be provided. Apparently this has been left as an administrative question (7690) to each board of education as to method in carrying out the mandate that 'high school work' must be provided. It is not within the province of the Attorney General to legislate upon any matter, that function resting with the General Assembly. The legislature in two laws upon transportation of high school pupils has said that (1) such transportation is 'optional' with the board (H. B. 216) and (2) 'power' to transport has been conferred in section 7764 (H. B. 111) to 'without the school district.' In neither is there a provision for compulsory transportation of high school pupils, except as to 7649 G. C. But a board of education may transport high school pupils in lieu of furnishing high school work in its district (Opinion 2447)." (Opinion 2693, issued December 1, 1921.)

Section 7762-6, as amended in 109 O. L., page 378, reads as follows:

"Every child of compulsory school age who is not employed on an age and school certificate shall attend a public, private or parochial school under the conditions prescribed in section 7763, 7763-1, 7764 and 7764-1, General Code."

Section 7763 G. C. provides that "compulsory school age shall mean six to eighteen years of age" and the effect of this is that a child between those ages must be in either the elementary schools or high school, or a private school, unless saved by other provisions of the law as to instruction at home, employment part time and part time schooling, as arranged for in detail for certain specific cases. If a child must go to school between the ages of six and eighteen years of age under the compulsory education law, then the board of education must furnish a place of schooling for the child to attend because the law does not contemplate the impossible thing of ordering a child to school when there is no school available. This is the situation which is apparently provided for in section 7764-1, that the board of education must provide work in high school branches "at some school within the four miles of the residence of each such child" for those children under eighteen years of age who live over four miles from a high school and those not transported to high school. One way of doing this would be for a teacher employed to teach the elementary branches "at some school within four miles of the residence of each such child," and also to be equipped for and required to teach high school branches, thus providing work "in high school branches" at the

school in question, as required under the provisions of section 7764-1. This, of course, means that the teacher, in addition to having an elementary teacher's certificate, must also have a certificate to cover the high school branches taught.

Apparently this instruction (7764-1 G. C.) might be secured in either of three ways: (1) by the establishment of a high school, (2) by providing work in high school branches at some elementary school within four miles of the residence of such child, and (3) by transporting the pupil to a high school where such high school work is provided. In many cases throughout the state boards of education do "provide work in high school branches" by transporting their pupils to a high school.

It is not believed that the General Assembly had in mind, when enacting section 7764-1 G. C., that every board of education in the state should mandatorily establish a high school, for if the General Assembly had that view in mind, the law-making body would have amended section 7663, which is still in force, and reads as follows:

"A board of education may establish one or more high schools whenever it deems the establishment of such school or schools proper, or necessary for the convenience or progress of the pupils attending them, or for the conduct and welfare of the educational interests of the district."

Here there appears a discretionary right of a board of education to say for itself as to whether, taking everything into consideration in its rural school district, it is in position to establish a high school. This is also apparent from the language of section 7668 G. C., which is still in force and reads in part as follows:

"In rural school districts where a high school or high schools are, or may be established, by the rural board of education, it annually shall determine," etc., etc.

Bearing specifically on your first question, it is noted that during the recent session of the present General Assembly there were two laws passed treating upon school transportation in more or less degree, one of which was H. B. 111 (Bing Law), discussed heretofore. The other was H. B. 216 (Bloom Law), which amended and supplemented the former sections upon school transportation. Prior to the enactment of amended section 7731 G. C., as amended by the 84th General Assembly, section 7731 provided as follows:

"In all rural and village school districts where pupils live

more than two miles from the nearest school the board of education shall provide transportation for such pupils to and from such school the transportation for pupils living less than two miles from the school house by the nearest practicable route for travel accessible to such pupils shall be optional with the board of education. * * *

It will be noted that this section was mandatory as to the transportation of pupils living more than two miles from the nearest school. As amended in 109 O. L., p. 289, section 7731 G. C., in its first paragraph, reads as follows:

"In all city, exempted village, rural and village school districts where resident elementary school pupils live more than two miles from the school to which they are assigned the board of education shall provide transportation for such pupils to and from such school except when in the judgment of such board of education, confirmed, in the case of a school district of the county school district, by the judgment of the county board of education, or, in the case of a city or exempted village school district, by the judgment of the probate judge, such transportation is unnecessary. The transportation for pupils living less than two miles from the school house by the nearest practicable route for travel accessible to such pupils and the transportation of pupils who are pursuing high school branches shall be optional with the board of education, except as provided in section 7749. General Code."

Stripped of all unnecessary words of limitation and qualification, the first sentence of section 7731 G. C. now provides:

"In all * * * school districts * * * the board of education shall provide transportation * * * except when in the judgment of such board of education * * * such transportation is unnecessary."

The first sentence of section 7731 G. C., as amended in H. B. 216, is upon the subject of the transportation of elementary school pupils who live more than two miles from the school to which they are assigned. Where this transportation of elementary pupils was mandatory upon a board of education under former section 7731 G. C., the local board of education can now avoid such transportation by simply pronouncing the same to be "unnecessary" and then have their judgment confirmed by either the county board of education or by the judgment of the probate judge, as the case may be. The amended section (7731) also provides that the transportation of elementary pupils living less than two miles from the school house shall be optional with the board of education, except where

the schools are centralized and transportation of pupils is provided (7749), and the transportation of pupils who are pursuing high school branches shall be optional also with the board of education, except as provided in section 7749 G. C. Under existing section 7731 (Bloom law) school transportation for pupils living more than two miles from the elementary school and those living less than two miles from the elementary school and those who are pursuing high school branches (regardless of distance) need not be furnished at all if the officers indicated in section 7731 G. C. (first paragraph) deem such transportation to be "unnecessary."

The Bloom law (H. B. 216) and the Bing law (H. B. 111), both speaking upon school transportation, must be dovetailed together where it is possible to do so, and where they conflict the well known rule of the law will prevail that the last law enacted upon a subject shall be considered to be the one in force.

An examination of the history of these two laws passed by the 84th General Assembly, upon the question of transportation of school children, shows that House Bill 111 (Bing law) was introduced in the 84th General Assembly January 27, 1921. Some twenty days later there was introduced House Bill 216 (February 17, 1921), but due to the discussion and hearings held upon H. B. 111 (the compulsory education law) the latter was passed later by the General Assembly than was H. B. 216. It is found that H. B. 216 (Bloom Law) became effective on August 16, 1921, and H. B. 111 (Bing Law) became effective on August 25, 1921. The result would be that the law last passed (Bing Law) would govern over the law first passed on those points where there was conflict between the two. From the above discussion we find that as far as H. B. 216 (Bloom Law) applies the transportation of elementary pupils living less than two miles from the school house by the nearest practicable route for travel accessible to such pupils is optional, as is also the transportation of pupils who are pursuing high school branches, the sole exception being those pupils who fall within section 7749 G. C., that is, where the district has been legally centralized and transportation has been provided. Under this same law (section 7731) the transportation of elementary pupils who live more than two miles from the school to which they are assigned is also optional under the existing statute, because the power given to the local board of education to pronounce such transportation to be "unnecessary" in its judgment, is an option, the only requirement being that its pronouncement that such transportation is unnecessary must be confirmed by the county board of education or the

probate judge, as the case may be. We thus come to an analysis of sections 7764 and 7764-1 of the General Code, appearing in H. B. 111 (Bing Law), effective nine days later than the day on which section 7731 G. C., as it now reads, became effective. These sections read:

"Section 7764: The child in his attendance at school shall be subject to assignment by the principal of the private school or superintendent of schools as the case may be, to the class in elementary school, high school or other school, suited to his age and state of advancement and vocational interest, within the school district; or, if the schooling is not available within the district, provided the child's tuition is paid and provided further that transportation is furnished in case he lives more than two miles from the school, if elementary, or four miles from the school, if a high school or other school. The board of education of the district in which the child lives shall have power to furnish such transportation."

"Section 7764-1: Boards of education shall provide work in high school branches, as mentioned in section 7648, General Code, at some school within four miles of the residence of each such child for those children of compulsory school age who have finished the ordinary grade school curriculum except those who live within four miles of a high school and those for whom transportation to a high school has been provided."

Bearing upon section 7764 G. C., it was held in Opinion 2693, issued December 14, 1921, as follows:

"The section speaks of assignment of * * * pupils (1) 'within the district' and (2) 'without the district', being separated by a semi-colon. As to assignment 'within the district' nothing is said on transportation, the provision as to 'power' to transport appearing relative to assignment 'without the district'."

In your first question you say that an elementary pupil has been assigned to a school which is more than two miles from the residence of the child. Under the language of section 7764 G. C. if this school to which the child is assigned is "within the district," then no right to transportation for such child exists. But if the child lives more than two miles from the school house to which assigned and such school is without the school district, then the child's tuition must be paid and transportation must be furnished in order to make such assignment "without the district" effective. Putting it another way, a board of education should not assign an elementary pupil to a school outside the pupil's district a distance

of more than two miles, unless transportation by the resident board of education is furnished.

Your second and third questions are upon high school transportation, first where a high school pupil is assigned "within the district" to a high school more than four miles from the residence of such child. Here again we are confronted with the language of section 7764 G. C. from which it appears that no right to transportation lies if the high school pupil has been assigned to a high school "within the school district," there being no mention of distance of such high school from the residence of the high school pupil.

Your third question is similar to your second question except that the high school pupil in question has been assigned "without the school district" and thus the second part of section 7764 G. C., that is, the portion following the semi-colon, applies. This reads that if a high school pupil has been assigned "without the district" the high school pupil's tuition must be paid in any event, regardless of distance, and if the assignment that is made is one which places the high school pupil in a school outside his district, located more than four miles from his residence, then in addition to the tuition of such high school pupil his transportation to the high school to which he is assigned outside of his district must be furnished in order to make such assignment effective. In other words, the school authorities should not assign a high school pupil to a high school outside the district more than four miles distant unless the board contemplates that transportation to such foreign high school is to be furnished. However, it is important to notice the language of section 7764-1 which is supplementary to section 7764 G. C. just discussed, for section 7764-1 requires that each and every board of education shall provide work "in high school branches" at some school within four miles of the residence of each child of compulsory school age who has finished the ordinary grade school, and if this work "in high school branches" is furnished by a board of education, then the question of transportation to a high school does not enter so largely, because this "high school work" is to be furnished at some school within four miles of the residence of the child. The language appearing in section 7764-1 G. C., relative to furnishing high school work at some school within four miles of the residence of each high school pupil, is mandatory upon each and every board of education, but if a board of education, rather than furnish the high school work within four miles of the residence of each high school pupil, desires to transport to a high

school, either in the district or outside the district, the board of education has that privilege or option.

In reply then to your question, you are advised that it is the opinion of this department:

1. Except in a centralized school district (7749 G. C.) the transportation of an elementary pupil to school by a board of education is optional (7731 G. C.) unless such pupil has been assigned to a school "without the district" distant more than two miles from the residence of the child (7764 G. C.)

2. Where a local board of education decides in its discretion that the transportation of an elementary pupil residing more than two miles from a school within the district is "unnecessary," such judgment of the local board must be confirmed by the county board of education, or the probate court, as the case may be; and if not so confirmed the transportation of an elementary pupil resident more than two miles from school is mandatory (7731 G. C.)

3. The transportation of elementary pupils residing two miles or less from school is optional with a board of education (7731) except in a centralized school district (7749 G. C.)

4. The transportation of a pupil eligible to high school by a board of education is optional (7731 G. C.) unless (a) the pupil resides in a district as described in 7749 G. C., or (b) has been assigned to a high school "without the district" and distant more than four miles from the residence of the pupil (7764 G. C.)

5. Every board of education must provide "work in high school branches" at some school within four miles of the residence of any pupil eligible to high school (7764-1 G. C.); but if the local board rather than furnish such work in its local district desired (a) to provide transportation to any recognized high school, or (b) pay for transportation under 7731-4 G. C. instead of directly providing it, or (c) pay for the pupil's room and board, or part of same, in an amount less than it would cost as provided in 7749-2 G. C., the local board has the privilege or option of thus furnishing "high school work."

SUPREME COURT

SYLLABI OF REPORTED CASES.

No. 16920—The State of Ohio v. Jack O'Mara. Exceptions by the Prosecuting Attorney to a Decision of the Court of Common Pleas of Hamilton County.

Hough, J.

1. The power to define and classify and prescribe punishment for felonies committed within the state, is lodged in the general assembly of the state, and when so defined, classified and prescribed, such laws must have a uniform operation throughout the state.

2. Manslaughter is one of the offenses which the general assembly has so defined, classified and for which punishment has been prescribed, and this court in construing and interpreting that act has held one species of manslaughter to be the unintentional killing of another while the slayer is in the commission of an unlawful act. (Johnson v. State, 66 Ohio St., 59, approved and followed.)

3. An ordinance of a charter city, general in nature, setting forth general and usual rules of the road, for a locality covered by its terms, passed in the valid exercise of the local police power, guaranteed under Section 3, Article XVIII, of the Ohio Constitution, and not in conflict with general laws, must be given full force and effect as a law of the locality to which it applies.

4. In a prosecution under an indictment for unintentional homicide, wherein a violation of Section 12603, General Code, providing that "whoever operates a motor vehicle * * * at a speed greater than is reasonable or proper, having regard for width, traffic, use and the general and usual rules of such road * * * shall be fined," etc., is relied upon as the "unlawful act" committed, and a valid ordinance defines the general and usual rules of the road in the locality where the killing occurred, the ordinance is competent to be introduced in evidence as proof of the general and usual rules of the road, or as an element of the proof that an unlawful

act was committed. (State v. Born, 85 Ohio St., 430, disapproved and overruled.)

Exceptions sustained.

Marshall, C. J., Johnson and Wanamaker, JJ., concur. Robinson, J., dissents Jones J., concurs in propositions 1 and 2 of the syllabus, but dissents from the judgment. Matthias, J., concurs in propositions 1, 2 and 3 of the syllabus.

No. 17076—B. J. Long v. Mary C. Cassiero and Joseph M. Cassiero. Error to the Court of Appeals of Cuyahoga County.

Jones, J.

1. A juror cannot, by affidavit, impeach his verdict by an attempt to prove that it was rendered through a misunderstanding of the court's charge, or by showing an intention different from that disclosed by his verdict.

2. It a mistake in computation is alleged to have crept into the verdict, this must appear from the record and not from affidavits of individual jurors that they misunderstood the charge of the court. In such case error must be predicted upon the ground that the charge was so misleading and prejudicial as to induce the erroneous verdict.

Judgment affirmed.

Johnson, Wanamaker, Robinson and Matthias, JJ., concur. Marshall, C. J., dissents.

No. 17096—The Security & Bond Deposit Company v. The State, ex rel, Allen J. Seney, Prosecuting Attorney. Error to the Court of Appeals of Lucas county.

Matthias, J.

A company incorporated under the laws of this state for the purpose of "contracting for and buying and selling securities and bonds, also borrowing and loaning on same and making loans on real estate security," is not authorized to engage in the banking business, and where such company solicits and receives government bonds, on deposit at its established place of

business in this state, agreeing to return same or like bonds upon call, or at a time agreed upon, paying therefor a stipulated rate of interest in addition to that called for by the coupons attached thereto, its announced purpose being to use same as collateral to borrow money which shall constitute its working capital, such transactions are beyond its authority and will be enjoined.

Judgment affirmed.

Johnson, Hough, Wanamaker and Jones, JJ., concur. Robinson, J., dissents.

No. 17203—Walter F. Tinker and Daisy Tinker v. Mary A. Sauer. Error to the Court of Appeals of Ross county.

Johnson, J.

1. A cause of action is the matter for which an action may be brought and embraces the facts which it is necessary to establish in order to sustain a claim for judicial relief.

2. On the appeal of a chancery case to the court of appeals that court has the same jurisdiction of the subject-matter of the action, the same control over the pleadings, the issuing and service of summons, and the final determination of the case that the court below had, and, in order to do complete justice and determine all the rights of the parties in the subject-matter of the suit, may permit amendments setting forth material facts and allegations in support of the original cause of action which have been omitted in the pleadings below.

Judgment affirmed.

Marshall, C. J., Hough, Wanamaker, Robinson, Jones and Matthias, JJ., concur.

No. 17440—City of Cincinnati, Charles F. Hornberger, Director of Public Service, et al. v. Philip Roettinger, etc. Error to the Court of Appeals of Hamilton county.

Marshall, C. J.

1. Section 3959, General Code, is constitutional and operates as a valid limitation upon the uses and purposes for which revenues derived from municipally owned waterworks may be applied. By virtue of the provisions of that section surplus revenues derived from water rents may be applied only to repairs, enlargement or

extension of the works, or of the reservoirs, and to the payment of the interest of any loan made for their construction, or for the creation of a sinking fund for the liquidation of the debt.

2. Section 3799, General Code, is in the nature of a limitation upon taxation, and as applied to cities and villages under charter governments does not violate any of the sections of Article XVIII of the Ohio Constitution and operates to prevent the transfer of revenues from the waterworks fund to the general fund.

3. Where the provisions of a city charter expressly adopt and continue in force as a part of such charter, provisions whereby the legislative power of the city shall be vested in council subject to the general and all local or special laws enacted by the general assembly of the state relating to the organization and government of cities and their officers and defining and limiting their powers and duties, such charter will be construed as a reaffirmation of all general laws pertaining to the government of municipalities enacted prior to the date of such charter and also all special laws therefore passed by the general assembly relating to such city, and any municipal legislation adopted by such city otherwise than by amendment of such charter, in conflict with any of the general laws of the state pertaining to municipalities or special laws pertaining to such city, will be invalid.

Judgment affirmed.

Wanamaker, Robinson and Mathias, J. J., concur. Hough, J., concurs in propositions 1 and 2 of the syllabus and in the judgment.

No. 17319—The State, ex rel. Leo J. Myers, v. Industrial Commission of Ohio and the Department of Industrial Relations of Ohio. In Mandamus. Marshall, C. J.

1. The different sections and parts of sections of the same legislative enactment should if possible be so interpreted as to harmonize and give effect to each and all, but if there is an irreconcilable conflict the later in position should prevail.

2. The special provisions in any legislative enactment must prevail over general provisions.

3. There is no ambiguous or indefinite language in Sections 12600-1, 12600-3, 12600-5 and 12600-77, of the General Code, being parts of the Ohio building code, 102 Ohio Laws, 586 et seq., and the provisions of those sections are mandatory, and, being part of the "special requirements" of the Ohio building code, the department of industrial relations of the state of Ohio does not by virtue of the general provisions of Section 12600-277, General Code, have authority to substitute other performance in place of the special requirements of those sections.

Demurrer sustained.

Johnson, Hough and Wanamaker, JJ., concur.

MOTION DOCKET

17034—The State, ex rel. Roy R. Stuart, Pros. Atty., v. John J. Urschel et al. Motion by plaintiff for further orders, judgments and decrees in Cause No. 17034 on the General Docket. Overruled.

17424—Jacob Smith v. The Ohio Savings & Trust Co. Motion for an order directing the Court of Appeals of Tuscarawas county to certify its record. Overruled.

17427—Marie D. LaFavre v. The Mutual Life Insurance Co. of New York. Motion for an order directing the Court of Appeals of Franklin county to certify its record. Overruled.

17451—E. C. Lathrop et al. v. Board of Education of the Rural School District of Camden Township. Motion for an order directing the Court of Appeals of Lorain county to certify its record. Overruled.

17461—C. S. Westover v. Norman W. Clark. Motion for an order directing the Court of Appeals of Stark county to certify its record. Overruled.

17463—Emil Brower et al. v. William Silverman. Motion for an order directing the Court of Appeals of Hamilton county to certify its record. Overruled.

17470—Harvey Steadman v. State of Ohio. Motion for an order directing the Court of Appeals of Cuyahoga county to certify its record. Overruled.

17404—The Liberty Mutual Insurance Co. v. Lewis B. Houck. Motion for an order directing the Court of Appeals of Knox county to certify its record. Overruled.

17470—Ralph C. McBride, treasurer of Cuyahoga county v. The White Motor Co. Motion for an order directing the Court of Appeals of Cuyahoga county to certify its record. Sustained.

17465—Anthony Krieger v. Wladyslaw Ekert, Admr. Motion for an order directing the Court of Appeals of Lucas county to certify its record. Overruled.

17466—The Cincinnati Realty Co. v. Benjamin F. Fitch. Motion for an order directing the Court of Appeals of Hamilton county to certify its record. Overruled.

17468—The State, ex rel. Melville Jackson, v. Lon Metzenholzer, Supt. of Workhouse, City of Dayton. Motion for an order directing the Court of Appeals of Montgomery county to certify its record. Overruled.

17472—Raymond J. Logan v. The Cincinnati Railway Co. Motion for an order directing the Court of Appeals of Cuyahoga county to certify its record. Sustained.

17477—T. M. Mattson v. James F. Kennedy. Motion for an order directing the Court of Appeals of Cuyahoga county to certify its record. Overruled.

17484—Nick Spano v. The State of Ohio. Motion for leave to file petition in error to the Court of Appeals of Mahoning county. Overruled.

17488—William H. McGannon v. State of Ohio. Motion for leave to file petition in error to the Court of Appeals of Cuyahoga county. Overruled.

GENERAL DOCKET

16753—Albert F. Patten v. The Aluminum Castings Co. Cuyahoga. On hearing. Former judgment adhered to.

16920—State of Ohio v. Jack O'Mara. Hamilton. Exceptions sustained.

16932—The Toledo Cooker Co. v. Frank Sniegowski. Lucas. Judgment of the Court of Appeals reversed and that of common pleas affirmed on authority of Patten v. Aluminum Castings Co.

16972—City of Cincinnati v. The Public Utilities Commission of Ohio. Public Utilities Commission. Order reversed.

17005—Henry J. Mergler et al. v. Public Utilities Commission. Public Utilities Commission. Order reversed.

17006—Charles Reedy et al. v. Public Utilities Commission. Public Utilities Commission. Order reversed.

17007—Ralph F. Rogan et al. v. Public Utilities Commission. Public Utilities Commission. Order reversed.

17008—H. H. Hosbrook, individually and as solicitor of the Village of Madeira, v. Public Utilities Commission. Public Utilities Commission. Order reversed.

17009—Robert A. Taft et al. v. Public Utilities Commission. Public Utilities Commission. Order reversed.

17010—Lewis N. Gatch et al. v. Public Utilities Commission. Public Utilities Commission. Order reversed.

17011—Charles Tatengorst et al. v. Public Utilities Commission. Public Utilities Commission. Order reversed.

17012—The U. S. Cast Iron and

Foundry Co. v. Public Utilities Commission. Public Utilities Commission. Order reversed.

17013—C. E. Yerkes v. Public Utilities Commission. Public Utilities Commission. Order reversed.

17014—H. H. Hosbrook, as solicitor of Sharonville, v. Public Utilities Commission. Public Utilities Commission. Order reversed.

17076—B. J. Long v. Mary C. Cassiero et al. Cuyahoga. Judgment affirmed.

17096—The Security & Bond Deposit Co. The State, ex rel. Allen J. Seney, Pros. Atty. Lucas. Judgment affirmed.

17203—Walter F. Tinker et al. v. Mary A. Sauer. Ross. Judgment affirmed.

17273—The State of Ohio, on Relation of Thomas J. Connor, v. Thos. J. Noctor et al., Board of Deputy State Supervisors and Inspectors of Elections at Hamilton County, and George P. Carrel, Auditor of City of Cincinnati. In Mandamus. Writ denied.

17319—The State, ex rel. Leo J. Myers, v. The Industrial Commission of Ohio et al. In Mandamus. Demurrer sustained.

17440—The City of Cincinnati et al. v. Philip Roettinger, a taxpayer. Hamilton. Judgment affirmed.

17305—Frank Hejnicki v. The Willys-Overland Co. Lucas. Judgment affirmed.

17487—The State, ex rel. William Barr, v. Alfred C. Deckenbach, auditor of the City of Cincinnati. In Mandamus. Demurrer overruled and writ allowed, on authority of State v. Robins, 71 Ohio State, 273.

SECRETARY OF STATE

NEW INCORPORATIONS

The Le Bel Mfg. Co., Cleveland, \$10,000. Cyrus Locher, Catherine Carroll, Frank J. Lausche, J. W. Woods, Frederick W. Green.

The Penfield Paint and Oil Co., Cleveland, \$3,000. H. H. Friedman, L. F. Slocum, Leo Keller, A. D. Glora, Jacob Weinstein.

The People's Savings & Loan Co., Wadsworth, \$500,000. R. A. Auble, J. A. Crumrine, Morgan Neath, Joseph J. Bender, M. W. Daniels.

The Cleveland Radiator Co., Euclid, \$30,000. David L. Johnson, M. C. Byrnes, B. E. Robertson, M. C. Myers, John T. Scott.

The St. Clairsville-Flushing Bus Line Co., Flushing, \$10,000. Abramo Giangiacomo, Joe Pezzopane, Prospera Pezzopane, Lewis Consigli.

The W. G. Baughman Co., Canton, \$5,000. W. G. Baughman, Beatrice Coldren, E. V. Dewel, Edward Crawford, Lloyd Harsh.

The Bliss Road Constr. Co., Cleveland, \$10,000. M. Beletzky, Samuel Rivkin, Jos. L. Spitz, Morris H. Wolf, David L. Schiff, A. H. Goold.

The Era Improvement Co., Cleveland, \$3,000. Wm. H. Levensen, Samuel Rivkin, Ben G. Ruby, Jos. L. Spitz, Anna R. Goold.

The H. B. M. Cabinet & Woodworking Co., Dayton, \$10,000. James E. Moore, H. S. Brown, Robert F. Hamilton, Ernest W. Brown, Lora A. Moore.

The A. F. Amor Motor Trucking Co., Cleveland, \$25,000. A. F. Amor, Ralph W. Sanborn, Clark T. McConnell, Chas. T. Rich, Harry F. Pattie.

The American Novelty Co., Cincinnati, \$20,000. P. Berkowitz, I. Rothman, Cathrine Rooney, Emerita Busemyer, Azril Alter.

The Shoe System Shop Co., Cleveland, \$10,000. Roland T. Wood, Julian S. Baker, Malvern E. Schultz, Frank G. Mercer, Katherine J. Rasmussen.

The McCoy Canned Food Co., Urbana, \$75,000. Carry C. Inskeep, T. E. Dye, Chas. D. Northup, Louis D. Johnson, Fred L. Dutton.

The H. P. Thompson Agency Co., Youngstown, \$10,000. H. P. Thompson, John Radcliffe, M. C. Gengenbacher, C. E. Seiler, Otto L. Wilfong.

The Combined Sales Instruction Co., Toledo, \$50,000. Charles O. Ramus, Ralph C. Stoner, Raymond T. Garrison, Louis E. Favret, Margaret Hearsons.

The Watson Tile & Mantle Co., Cleveland, \$10,000. Lawrence M. Rich, E. A. Watson, A. A. Watson, Emily Watson, A. G. Sar Louis, W. E. Watson.

The Akron Elks Athletic Club Co., Akron, \$10,000. W. E. Cunningham, C. A. Evans, M. C. Rosenfeld, Frank Wills, Ralph G. Thomas.

The Youngstown Fun House Co., Cleveland, \$500. K. T. Siddall, Quay H. Findlay, N. J. Horsburgh, R. L. Haverick, I. M. McDonough.

The International Thrift Service Co., Cleveland, \$500. K. T. Siddall, Quay H. Findlay, M. I. Buelow, R. L. Haverick, I. M. McDonough.

The Youngstown Carrousel Co., Cleveland, \$500. K. T. Siddall, Quay H. Findlay, C. A. Alexander, R. L. Haverick, I. M. McDonough.

The Deibel Motor Co., Youngstown, \$100,000. Christ S. Deibel, Peter C. Deibel, E. L. Lawler, Millie M. Deibel, Mary Frances Lawlor.

The Nesmith Park Co., Akron, \$25,000. P. Marsh, Harry E. Marsh, Edna F. Marsh, C. Marsh, C. F. Schnee.

The Better Coal and Supply Co., Cleveland, \$25,000. Jos. E. Grant, C. K. Zimmer, Geo. C. Limbaugh, W. B. Thompson.

The Luxe Hotel Co., Cleveland, \$10,000. Charles Evans, F. H. Pelton, E. H. Krueger, R. L. Davis, Thomas E. Hann.

The Reliable Home Baking Co., Cleveland, \$5,000. S. S. Kest, A. M. Papurt, Garrett Stevens, Gladys Kane, I. J. Papurt.

The Balfour Snyder Co., Columbus, \$500. Balfour Snyder, Charles R. Snyder, John L. Walters, Henry B. Albright, Frank C. Harrison.

The Urbana-Greenville Gravel Co., Greenville, \$200,000. F. D. Coppock, H. R. Brown, Guy C. Baker, Joe F. Coppock, C. E. Patty.

The C. H. Ehler Electric Co., Dayton, \$30,000. Carl H. Ehler, Warren L. Ackley, Wilcher J. Donley, Frank Harvey, Iva M. Ehler.

The Ohio Rock Products Co., Vincent, \$1,000. Thomas F. Hayes, George E. Hayes, Chas. H. Danford, Verner E. Metcalf, Lillian M. Stephens.

The Kauffman-Creager Co., Cleveland, \$10,000. Samuel Silberger, John H. Woods, Frank C. Kauffman, Amos F. Creager, Geo. H. Woods.

The Ohio Toy & Stamping Co., Cleveland, \$10,000. A. S. Kletzkun, William Morrison, H. H. Englehart, Benj. Zak, Sam Dubick.

The Richland Rubber Co., Mansfield, \$1,000. G. W. Stephens, Charles Hoffman, P. H. Ober, Jesse W. Wainwright, Jesse E. LaDow.

The West Side Overland Co., Cleveland, \$10,000. A. W. Arundel, J. A. Cline, W. T. Smith, G. O. Smith, Mabel Gulick.

The Cleveland-Independence-Breckville Bus Line Co., Cleveland, \$10,000. B. H. Schwartz, J. Schnuerer, Albert B. Klein, Bernard J. Smolin, S. Rucker.

The Masculine Laundry & Cleaning Co., Cleveland, \$5,100. Walter L. Oehme, Edw. C. Schmitt, Wm. F. Oehme, B. H. Schwartz, J. Schnuerer.

The John R. Stewart Co., Columbus, \$1,000. C. R. Reed, R. E. McCollum, I. C. Robinson, S. H. Parker, R. P. Miller.

The East 152nd St. Land & Development Co., Cleveland, \$25,000. Orpha M. Killmaster, John H. Hogg, R. L. Toben, A. M. Maher, R. F. Mosher.

The Dover Lumber Co., Dover, \$25,000. John H. Hogg, R. F. Mosher, C. H. Foote, R. L. Toben, A. M. Maher.

The Dayton Electrotpe Co., Dayton, \$25,000. H. W. Lehr, G. R. Lohnes, Mrs. H. W. Lehr, W. M. Pearson, C. H. Thomas.

The Gordon Gardens Co., Cleveland, \$15,000. Alfred I. Soltz, Benj. Feinsilber, Martin E. Blum, M. Christopher, S. I. Powell.

The McKinnon Sign Co., Lima, \$2,500. A. G. McKinnon, Walter Wright, L. Bornhorst, H. L. Kay, B. E. Tabler.

The Star Mercantile Co., Toledo, \$25,000. Oscar J. Smith, Helen L. Christopher, Charles S. Northup, John B. McMahon, C. W. F. Kirkley.

The Weldless Tube Co., Wooster, \$300,000. Elmer S. Landes, C. M. Grav, John C. Schultz, E. C. Dix, O. H. Larwill.

The Warehouse Realization Co., Dayton, \$100,000. Sidney G. Kusworm, B. R. Shaman, Ralph Gross, R. E. Marrs, C. M. Seybold.

The Bellevue Implement Co., Bellevue, \$20,000. H. J. Bounds, C. A. Wertz, John Hupman, C. H. Mitchell, H. E. Trautman.

The U. & S. Realty Co., Cleveland, \$500. Samuel H. Strauss, Louis Uberstein, Louis Henkin, E. K. Stern, G. E. Buchheit.

The Coshocton Mortgage Co., Coshocton, \$500. Lloyd S. Leech, A. G. Gilmour, I. H. Bouvier, M. B. Leech, Otis G. Morse.

The Miles Ave. Market Co., Cleveland, \$500. Stephen Zawada, Margaret Madden, Byron D. Kuth, Ovid L. Dally, P. M. Berry.

The Mortgage Credit Co., Akron, \$1500. B. A. Shriber, B. F. Griffith, T. H. Evans, G. N. Shriber, Edwin W. Brouse.

The Middlewest Prod. Co., Columbus, \$5,000. Wm. F. Kern, H. K. Hill, Geo. Marzluf, H. E. Johnston, John H. Edwards.

The Emess Mfg. Co., Cleveland, \$50,000. George Q. Keeley, Earl W. LeFever, W. A. Brassell, M. A. Friedman, E. S. Henig.

The Trent-Mueller Fuel Co., Cincinnati, \$30,000. P. Trent, L. J. Mueller, W. F. Hopkins, K. S. Morrison, Clifford Brown.

The Girard Paint Co., Girard, \$25,000. James H. Drape, Herman H. Bushong, Martin P. Bushong, Frank A. Darling, Benj. F. Jenkins.

The Big Mountain Coal Co., Columbus, \$10,000. D. H. Armstrong, E. M. Lighthizer, M. R. Weltner, E. H. Hanna, C. W. Culp.

The Zollinger Mercantile Co., Canton, \$150,000. W. R. Zollinger, C. W. Zollinger, H. C. Zollinger, H. S. Armstrong, A. M. McCarty.

The Riverview Amusement Co., Elyria, \$35,000. C. L. Worthington, P. W. Robinson, A. E. Simmons, C. P. O'Donnell, L. D. Hamlin.

The Madhill Gardens Co., Cleveland, \$500. Wm. A. McAfee, A. B. Oakes, T. F. Veach, Maurice F. Hanning, C. E. Van Gorder.

The Franklin Constr & Realty Co., Columbus, \$450,000. Wm. L. VanSickle, Russell Y. Wirts, Ira W. Long, Leo M. Ross, Edwin E. Pruitt.

The Meckler Bros. Co., Cleveland, \$5,000. Theodore Meckler, Julius Meckler.*

The Federal Analysis Co., Youngstown, \$1,000. D. M. Emery, E. T. McCleary, H. S. Braman, Henry A. Butler, C. S. Robinson.

The Balsam Remedy Co., Cincinnati, \$50,000. Guy Vincent Lewis, Herman Frank Holthaus, Clarence L. Cox, John W. Flach, Arthur L. Calvert.

The Gardner Tap & Die Co., Cleveland, \$500. R. G. Morrison, M. P. Guenther, George B. Folk, R. P. Cunningham, Clifton I. Rust.

The Arrow Motors Co., Sandusky, \$500. Joseph G. Pyle, M. L. Osborn, C. R. Spahn, E. B. King, A. C. Burch. Max W. Pack, Moses Pack, Phil Pack.

The Lodi-Penn Oil & Gas Co., Cleveland, \$50,000. H. A. Dempsey, L. F. McGrath, John J. Moore, C. M. Bushong, M. B. Glore.

The Toledo Ignition Co., Toledo, \$1,000. F. E. Murphy, E. Toska, David A. Gaskill, Carl V. Weygandt, C. W. Sellers.

The Westend Terminal Railway Co., Cincinnati, \$10,000. H. Lee Early, Milton Saylor, Morgan Wamsley, Dr. John H. Walton, Louis B. Patterson.

The Mo-No Mfg. Co., Cleveland, \$10,000. John Dolch, O. J. Sturdevant, Earl M. Brown, G. A. Warstler, E. Savatsky.

The 344 Tire Co., Portsmouth, \$2,000. Raymond E. Sheets, F. Virginia Sheets, Katherine M. Alsbaugh, John G. Schmidt, James S. Alsbaugh.

The Cincinnati Ignition Co., Cincinnati, \$1,000. Elmore L. Andrews, E. Toska, E. A. Levine, F. E. Murphy, Carl V. Weygandt.

The Memorial Park Improvement Co., Akron \$10,000. W. C. Beckwith, Jr., Frank H. Dietz, Charles Dixon, Bernadette Stehle.

The Milner-Blonder Co., Cleveland, \$50,000. Nathan Milner, Harry Blonder, Fred S. Neubauer, M. Welensky, Anna R. Goid.

The Reliance Foundry Co., Cincinnati, \$50,000. Charles Radley, Edwin D. Brooks, Chas. T. Crawford, Chas. W. Brooks, Albert J. Wessel.

The National Ad Service Co., Cincinnati, \$10,000. Henry A. Rattermann, Chas. H. E. Rieck, Chas. Kobmann, J. George Ege, J. J. Lang, J. L. McLeish.

The Cleveland Products Co., Cleveland, \$5,000. Cleveland J. Suffens,

David A. Levine, William Bialosky, Vivian Falle, M. B. Abrans.

The Metal Improvements Co., Cleveland, \$500. James Rosenberg, H. B. Howells, E. W. Riemen-schneider, Claude W. Simmon, H. Liptak.

The Cooper Research Co., Cleveland, \$500. Frank G. Mooney, Irwin N. Loeser, Ira J. Warner, M. M. Roche, M. A. Loeser.

The Conklin Studios Co., Cleveland, \$500. L. M. Sewell, A. J. Pejisa, H. L. Deibel, A. E. Rogers, Gilbert Morgan.

The Silkosiery Co., Cincinnati, \$10,000. Frank J. Chandler, Sol Schaengold, Lillian Chandler, Robert J. Herman, Harry C. Burns.

The Van Toy Co., Cleveland, \$500. R. H. Jamison, E. B. Freed, E. Harper N. K. Dorr, T. M. Lavello.

The Copper Products Forging Co., Cleveland, \$200,000. Ralh W. Edwards, Corinne Allshouse, W. J. Coughlin, R. A. Gillis, Agnes Kent Strong.

The Kemper Lane Building Co., Cincinnati, \$10,000. Oliver M. Dock, Harry R. Weber, August Reinhardt, Raymond C. Dieckman, Landon L. Forchheimer.

The Anderson Building Materials Co., Akron, \$500. John C. Stuver, Edwin W. Brouse, Amos H. Englebeck, C. Blake McDowell, Gordon Davis.

The Tailors Co-operative Dry Cleaning Co. Cleveland, \$20,000. A. Brooks, W. B. Beckerman, Alex Raner, Sam Herzberg, Harry Aaron, Sol Lefkovitz.

Increases

The Haines Walker Lumber Co., Warren, from \$50,000 to \$100,000.

The Jaspersen Supply Co., St. Marys, from \$100,000 to \$125,000.

The H. B. Mallette Co., Cleveland, from 100 to 2000 shares no par value.

The Warren & Niles Telephone Co., from \$200,000 to \$500,000.

The Martin Young & Sons Co. Cincinnati, from \$25,000 to \$50,000.

The Unger Realty Co., Youngstown, from \$400,000 to \$450,000.

The Milmine Iron and Steel Co., Toledo, from \$10,000 to \$80,000.

The Feth Linotyping Co., Cincinnati, from \$10,000 to \$20,000.

The New Zanesville Provision Co., Zanesville, \$100,000 to \$200,000.

PUBLIC UTILITIES COMMISSION

No. 2514—In the Matter of the Application of Chilton H. Meier, Trading as The Mogadore-Akron Bus Line, for Consent and Authority to Issue and Deliver Promissory Notes, Payable in More Than Twelve Months From Date. Prayer Granted.

(Dated April 20, 1922.)

This day, it appearing to the Commission from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, this matter came on for consideration upon the application of Chilton H. Meier, of Mogadore, Ohio, for the consent and authority of this Commission to make and issue promissory notes, of the total principal sum of five thousand, five hundred dollars, dated February fifteenth, 1922, secured by a chattel mortgage upon all the property, rights and other assets of the public utility trading as The Mogadore-Akron Bus Line, (the purchase and acquisition of which, by applicant, was this day consented to and authorized by order made and entered in proceeding No. 2513), bearing interest at the rate of seven percentum per annum and maturing, serially, \$300.00 per month for the first seventeen months from date, and \$400.00 in eighteen months from date, in evidence of applicant's indebtedness for the deferred payments of the consideration for said public utility property.

The Commission, being fully advised in the premises, finds from the pleadings and exhibits filed herein and its independent inquiry and investigation thereupon:

That, for purchase and sale purposes, the said property, rights and other assets composing said The Mogadore-Akron Bus Line, and worth the sum of \$7,500.00, and

That the issuing and delivering of applicant's said promissory notes of the principal sum of \$5,500.00 is reasonably required and necessary for the acquisition of property,

and is satisfied that consent and authority for the issue and delivery of said notes should be granted. It is, therefore,

Ordered, That the said Chilton H. Meier, of Mogadore, Ohio, be, and hereby he is authorized to make and issue promissory notes, dated February fifteenth, 1922, secured by a chattel mortgage upon all the property rights and other assets of the public

utility trading as The Mogadore-Akron Bus Line, bearing interest at the rate of seven per centum per annum, and maturing serially \$300.00 per month for seventeen months and \$40.00 in eighteen months from date, of the total principal sum of five thousand, five hundred dollars (\$5,500.00). It is further

Ordered, That said promissory notes be, by the applicant, issued and delivered in evidence of his indebtedness for the deferred payments of the consideration for all the property, rights and other assets composing the public utility, known as The Mogadore-Akron Bus Line, the purchase and acquisition of which, by the applicant, was duly consented to and authorized by the order this day made and entered in proceeding No. 2513, and for no other purpose whatsoever. It is further

Ordered, That the applicant make verified report to this Commission of the issue and disposition of said notes pursuant to the terms and conditions of this order. It is further

Ordered, That the finding hereinbefore set forth as to the value of said property shall not be binding upon this Commission in any future proceeding involving rates and or service.

*

NO. 2542—In the Matter of the Application of The Akron-Youngstown Bus Company for Consent and Authority to Issue and Dispose of \$25,000.00 Common Capital Stock. Prayer Granted.

(Dated May 5, 1922.)

This day, after due notice to all parties in interest, this matter came on to be heard and was heard upon the application of The Akron-Youngstown Bus Company, (a corporation duly organized and existing under and by virtue of the laws of the State of Ohio, for the purpose, among others, of operating a bus line between the cities of Akron, Cuyahoga Falls, Kent, Ravenna, Warren, Niles and Youngstown and in territory adjacent thereto), for the consent and authority of this Commission to issue and dispose of its common capital stock of the par value of \$25,000.00, the proceeds arising from the sale thereof to be used to pay organization expenses, purchase three motor busses, two of which are under contract, acquire a second-hand bus, and provide a working capital and supply of materials and repair parts.

The Commission, being fully advised in the premises, finds:

That the applicant's organization expenses should amount to approximately the sum of \$350.00;

That the applicant has under contract, the purchase of

two new White Motor Busses at a price of \$14,284.00, and one second-hand or used bus at a price of \$2,500.00, and has in contemplation the purchase of an additional White Motor Bus at a cost of \$7,142.00;

That for the maintenance of its service the applicant will reasonably require a working capital of \$724.00, and

That the issue of applicant's common capital stock of the par value of \$25,000.00 is reasonably required and the money to be procured thereby necessary for the acquisition of property, the payment of its organization expenses, and the maintenance and improvement of its service as aforesaid,

and is satisfied that consent and authority for the issue and disposition of said common capital stock should be granted. It is, therefore

Ordered, That said The Akron-Youngstown Bus Company be, and hereby it is authorized to issue its common capital stock of the par value of twenty-five thousand dollars (\$25,000.00), and that said capital stock be sold for the highest price obtainable but not less than the par value thereof. It is further

Ordered, That the proceeds arising from the sale of said capital stock be, by the applicant, devoted to and used for the following purposes, and no others, to-wit:

The payment of organization expenses.....	\$ 350.00
The purchase of two White Motor Busses, now under contract	14,284.00
The purchase of one additional White Motor Bus....	7,142.00
The purchase from one James N. Logan of a used motor bus	2,500.00
To provide a working capital and supply of mater- ials and supplies	724.00

It is further

Ordered, That the applicant make verified report to this Commission, semi-annually, within fifteen days after the close of each calendar, semi-annual period, of the issue and disposition of said capital stock and, in full detail, the expenditure of the proceeds thereof pursuant to the terms and conditions of this order.

3

No. 2473—The East Liverpool Sand Company, Complainant vs. The Pennsylvania Railroad Company, Defendant.

(Dated May 17, 1922.)

Finding

The complainant is a corporation engaged in the business of producing and selling sand and gravel, with plant located on the

Pennsylvania Railroad at East Liverpool, Ohio. By complaint, filed January 23, 1922, it alleges that the defendant, Pennsylvania Railroad Company, has violated the laws of the State of Ohio governing its business in the following particulars to-wit: For the transportation of sand and gravel from East Liverpool, Ohio to Alliance, Cleveland and Youngstown, Ohio, and points intermediate thereto; also other points in the state in what is generally referred to as the Alliance, Cleveland & Youngstown Districts, and assessing rates therefor that are unjustly discriminatory and unreasonable.

At the hearing, complainant abandoned all issues raised which had to do with rates other than the rate on gravel from East Liverpool, Ohio, to Cleveland, Ohio. At present there is no published rate on gravel from East Liverpool to Cleveland, other than the Sixth Class rate of \$3.50 per ton. We are asked to establish a rate of 90c per ton for the movement. Prior to the filing of complaint, the complainant took this matter up with the defendant carrier and particularly the fact that no commodity rate is published on gravel from East Liverpool to Cleveland, Ohio, and after conferences and investigations, the Defendant offered to put in a rate of \$1.10 per ton. The proposed rate was not satisfactory to complainant, hence the matter has been submitted to us for determination.

The distance from East Liverpool to Cleveland is 104 miles and it is a one-line movement over the rails of the defendant carrier except switching service is required for certain deliveries at Cleveland.

Complainant's product consists of both sand and gravel which is secured through digging operations from the bed of the Ohio river, the gravel being known as River Gravel. Its equipment consists of one sand digger, fifteen barges, one tow boat, one derrick boat, one stationary derrick, one siding of 12 car capacity and one storage bin of two thousand tons capacity. During the process of production and in order to get sufficient supply of sand to supply normal trade, twice as much gravel as sand is produced. In the past a very large portion of the gravel has been washed back into the river on account of there being no available market for it, a total of 50,000 tons having been wasted last year. Gravel produced by complaint is of a superior quality to what is known as Bank Gravel and according to the Record is the kind in quality that is desirable in extensive construction work in the Cleveland District. Such gravel is round in form and free from soft and flat particles that are found in Bank Gravel. Complainant is equipped to pro-

duce 800 tons of gravel per day and the price of the commodity f. o. b. East Liverpool ranges from 50c to 65c per ton.

Witness Quail testified: (a) That the approximate consumption of crushed stone, slag and gravel for construction work in the Cleveland District amounts to one million tons per year; (b) that under present conditions the proportion of each used in Cleveland construction work is approximately as follows: crushed stone 50%, slag 40% and gravel 10%; (c) that for certain kinds of work River Gravel is preferable to crushed stone or slag and a considerable quantity of such gravel would be used in Cleveland provided same could be laid down on a competitive basis with crushed stone; (d) that, in concrete construction work, more pounds of gravel are required per cubic yard than of either crushed stone or slag; (e) that there is a normal and natural market for Ohio River gravel, in large quantities, at Cleveland and East Liverpool is the nearest point where such gravel can be secured; and, (f) aside from the inferior quality, there is not sufficient production of Bank Gravel available to meet the demands at Cleveland.

The following taken from Defendant's Exhibit No. 1 shows rates on sand and gravel from certain producing points in Ohio to Cleveland:

(The distance shown is the short-line mileage)

From	Route	Distance in Miles	Rates in Cents Per Ton
Killbuck #	Pennsylvania	93	90
Layland #	"	98	90
Brink Haven	"	107	110
Howard	"	111	110
Dresden	"	123	120
Rush Run	"	125	120
Adam's Mills	"	129	120
Ellis	"	129	120
Gilbert	"	131	120
Zanesville	"	137	120
Kauke #	B. & O.	95	90
New Cumberland #	W. & L. E.	93	90
Toledo	"	107	120
Zanesville	"	137	120
Marion	C. C. C. & St. L	101	110
Toledo	"	107	110
Frances Quarry	"	128	90
Columbus	"	138	130
Mechanicsburg	"	146	90

Defendant calls attention to the fact that these rates were

made on the group principle and there are numerous other points within the group, at distances ranging from 52 to 87 miles from Cleveland which take the same rate.

The following taken from Complainant's Exhibit No. 1 shows the rates on crushed stone from various producing points in Ohio to Cleveland:

(Distances shown represent the actual mileage traveled under the published rate, some are short-line and others are not).

From	Route	Distance in Miles	Rates in Cents Per Ton
Tiffin	Pennsylvania	157	90
Marion	"	158	90
Maple Grove	"	165	90
Dunkirk	"	175	90
Gibsonburg	"	177	90
Marion	C. C. C. & St. L.	101	90
Delaware	"	114	90
Scioto	"	118	90
White Sulphur	"	120	90
France Quarries	"	164	90
Warren	B. & O.	75	90
Youngstown	"	90	90
Girard	"	96	90
Lowellville	"	98	90
Lisbon	Erie	91	90
Marion	"	191	90

Complainant's Exhibits 1 and 3 show the following published rates on gravel for various movements within the State of Ohio, as indicated:

Transportation Movement	Route	Distance in Miles	Rates in Cents Per Ton
Dover	To Cleveland B. & O.	94	90
New Philadelphia	To Cleveland "	97	90
Lowellville	To Cleveland "	98	100
Millersburg	To Cleveland "	110	90
Chillicothe	To Belpre "	96	80
Mechanicsburg	To Greenwich C. C. C. & St. L.	95	90
Mechanicsburg	To New London "	103	90
Mechanicsburg	To Rochester "	108	90
Mechanicsburg	To Wellington "	114	90
South Dayton	To Edison "	97	90
South Dayton	To St. James "	104	90
South Dayton	To Galion "	110	90
Baltic	To Cleveland W. & L. E.	101	90
West Point	To Cleveland Erie	96	100

The Record shows that a contract was recently let for the construction of a large reservoir in the City of Cleveland requiring

150,000 yards of coarse aggregates, the specifications for which provided for the use of either crushed stone or River Gravel; that gravel was shut out on account of the freight rate and crushed stone is being used, on said job, which is secured from Woodville and Carey, Ohio, at a price of 75c per ton, f. o. b. point of origin; and that the freight rate on crushed stone from both Woodville and Carey to Cleveland is 90c per ton. The short-line distance from Woodville and Carey to Cleveland is, respectively, 104 and 102 miles.

Under the Official Classification both gravel and crushed stone are rated Sixth Class. But economic expediency demands lower rates on such commodities and it has been the practice of carriers and commissions in this territory to fix special commodity rates considerably lower than the class rate between points where there is an actual or potential movement of gravel or crushed stone and these commodity rates have come to be the normal rates in comparison with which other rates for the transportation of such commodities are to be measured.

Generally speaking there would appear to be no justification for a higher level of rates on gravel than on crushed stone. Both commodities coming into direct competition and of the two crushed stone is of higher value. Crushed stone and gravel are of the lowest-grade commodities known to commerce and in addition to this, there are a number of factors which result in comparatively low cost to the carrier in transporting these commodities, and which, therefore, constitute a further justification for a low basis of rates. In the first place the loading is very heavy, even in excess of the car capacity. Since the same amount of "dead" weight of the car itself, which produces no revenue, must be hauled whatever the car is loaded with, a heavy loading reduces the proportion "dead" weight to "pay" weight. In other words, the revenue producing part of the weight hauled is greater, in proportion to the unremunerative part of the weight, that in the case where the loading is light. Further, gravel and crushed stone can be loaded in the cheapest grade of gondola or open car equipment and the liability risk is nil because no amount of jarring or exposure to the elements can do them any damage.

The Record shows that the rates on crushed stone from various producing points in Ohio to Cleveland, for distances comparable with the one herein involved are on a basis 90c per ton. These rates were established, after an exhaustive investigation, pursuant to the order of this Commission in Docket 2327 dated September 29, 1921, and there is nothing in this Record to convince us that they are

not on a just and equitable basis, nor are we convinced that such rates operate to discriminate against interstate commerce.

Considerable evidence was adduced concerning complainant's cost of production, its efficiency of management etc., and it is claimed by defendant that with a rate of \$1.10 per ton complainant can compete on a favorable basis in the Cleveland Market. Evidence of this character, while interesting, is of but little value to the Commission in determining the issue involved. In the "Western Advanced Rate Case" the Interstate Commerce Commission said:

"To make rates for transportation based solely upon the ability of the shipper to pay those rates, is to make the charge for transportation depend upon the cost of production rather than upon the cost of carriers—to measure a public service by the economies practiced by the private shipper. This necessarily gives to the carrier the right to measure the amount of profit which the shipper may make and fix its rates upon the traffic manager's judgment as to what profit he will be permitted. This theory entitled the railroad to enter the books of every enterprise which it serves and raise or lower rates without respect to its own earnings but solely with respect to the earnings of those whose traffic it carries. This is not regulation of railroads by the nation but regulation of the industries and commerce of the country by its railroads." (20 I. C. C., 350, 351).

The defendant claims that the establishment of the rate requested will tend to break down its sand and gravel rate structure. This may be true but the fact that other re-adjustments might follow is no reason why the complainant should be denied a just and reasonable rate for the service under immediate consideration.

After a careful consideration of all the facts of record, we find that the rate of \$1.10 per ton, proposed by defendant for transporting gravel, in carloads, from East Liverpool to Cleveland is unjust and unreasonable to the extent that it exceeds 90c per net ton; we further find that for the future a rate of 90c per net ton will be a just and reasonable rate for the transportation of gravel, in carloads, over the line of the defendant carrier from East Liverpool, Ohio to Cleveland, Ohio; we further find that the Respondent should be required to establish on or before June 5, 1922, upon notice to this Commission and to the general public by not less than one day's filing and posting, the rate herein found to be just and reasonable.

An appropriate order will be entered.

Order

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof;

It is ordered, that the defendant, The Pennsylvania Railroad Company, be, and it is hereby notified and required to establish, on or before June 5, 1922, upon notice to this Commission and to the general public by not less than one day's filing and posting, a rate of not to exceed 90 cents per net ton for the transportation of gravel, in carloads, from East Liverpool, Ohio to Cleveland, Ohio.

It is further ordered, that the complaints herein, insofar as they seek other or additional relief, be, and hereby they are dismissed.

✽

No. 2549—In the Matter of the Application of The Cleveland-Independence-Brecksville Bus Line Company for Consent and Authority to Issue and Dispose of Capital Stock and Notes Secured by a Chattel Mortgage. Prayer Granted.

(Dated May 17, 1922.)

This day, after due notice to all parties in interest, this matter came on to be heard, and was heard, upon the application of The Cleveland-Independence-Brecksville Bus Line Company, a corporation duly organized and existing under and by virtue of the laws of the State of Ohio, for the consent and authority of this Commission to issue and dispose of common capital stock of the par value of five thousand dollars and to issue and deliver forty promissory notes, of the principal sum of two hundred and fifty dollars, each, or the total principal sum of ten thousand dollars, to bear interest at the rate of five per centum per annum, to be secured by a chattel mortgage upon all the property of the applicant, and to mature, serially, in each month subsequent to the date of issue, the proceeds arising from the sale of said common capital stock to be paid as part of the consideration for, and said notes to be delivered in evidence of applicant's indebtedness for and on account of the deferred payments for all of the property, rights and other assets composing the automobile bus line now operated by

one John H. Foerster between the City of Cleveland and the Villages of Independence and Brecksville, Ohio, the purchase and acquisition of which, by the applicant, for the agreed consideration of fifteen thousand dollars, was this day consented to and authorized by the order made and entered in proceeding No. 2548.

The Commission, being fully advised in the premises, finds:

That, for purchase and sale purposes, the value of said property, rights and other assets, so to be acquired by the applicant, is the sum of \$15,000.00, and

That the issue and disposition of applicant's said common capital stock and promissory notes is reasonable required, and the money to be procured thereby, necessary for the acquisition of property, to be used and useful for the prosecution of applicant's corporate purposes,

and is satisfied that consent and authority for the issue and disposition of said common capital stock and promissory notes should be granted. It is, therefore,

Ordered, That said The Cleveland-Independence-Brecksville Bus Line Company be, and hereby it is authorized to issue its common capital stock of the par value of five thousand dollars (\$5,000.00), and its forty (40) promissory notes of the principal sum of two hundred and fifty dollars (\$250.00) each, or the total principal sum of ten thousand dollars (\$10,000.00), to bear interest at the rate of five per centum per annum, to mature serially, in each succeeding month after the date thereof, and to be secured by a chattel mortgage upon all of the property, rights and other assets of the applicant, and that said common capital stock be sold for the highest price obtainable but not less than the par value thereof. It is further

Ordered, That the proceeds arising from the sale of said common capital stock be paid to one John H. Foerster in partial payment of the agreed consideration, \$15,000.00, and said promissory notes delivered to the said John H. Foerster in evidence of applicant's indebtedness for and on account of the deferred payments of said consideration for all of the property, rights and other assets composing the automobile bus line now operated by the said John H. Foerster between the City of Cleveland and the Village of Independence and Brecksville, Ohio, (consent and authority for the purchase and acquisition of which, by the applicant, was this day granted by the order made and entered in proceeding No. 2548, which order hereby is made a part of this order by reference), and paid and delivered for no other purpose whatsoever. It is further

Ordered, That the issue and disposition of said promissory notes of the principal sum of five thousand dollars in excess of the issued and outstanding capital stock of the applicant be, and hereby it is specifically consented to, authorized and approved. It is further

Ordered, That the applicant make varified report to this Commission of the issue and disposition of said common capital stock and promissory notes and the expenditure of the proceeds of said common capital stock pursuant to the terms and conditions of this order. It is further

Ordered, That the finding hereinbefore set forth as to the value of said property and the within authorization of the capitalization of the consideration therefor, shall not be binding upon this Commission in any future proceeding involving rates and or service.

ATTORNEY GENERAL

The Word "Printing" is Used in Section 2759, G. C., in Reference to the Recording of Instruments in the Recorder's Office of a County Cannot Be Construed to Include the Process of Photostating. In Other Words Instruments Must Not Be Recorded by Making Photographs of the Same.

No. 2997—(Opinion Dated April 15, 1922.)

Hon. Edward C. Stanton, Prosecuting Attorney, Cuyahoga County, Cleveland, Ohio:

Dear Sir—Receipt is acknowledged of your recent communication which reads as follows:

"The Board of County Commissioners of Cuyahoga County has under consideration the matter of having recorder's and other county records made up by photographic prints of the original papers sought to be recorded. They have asked this department whether under the provisions of Section 2759, G. C., records in the recorder's office could be made up by photographic prints. We are inclined to the opinion that if the state of the photographic art is such that the element of durability is settled, such records could be made up by photographic printing as well as by any other process of printing. This being a question that is state wide in its application and importance, we ask that you give us your opinion on the subject."

Answer to your question is thought to be indicated in the construction given Section 2759 of the General Code. The Section is as follows:

"Sec. 2759. The county recorder shall record in the proper record in a fair and legible handwriting, typewriting, or printing, all deeds, mortgages, or other instruments of writing required by law to be recorded, presented to him for that purpose. They shall be recorded in regular succession according to the priority of presentation, entering the file number at the beginning of such record. At the foot of the record of each instrument he shall record the date and precise time of day when it was presented for record."

Construing the section quoted, it becomes apparent that the legislature has provided three methods by which county recorders are required to record all deeds, mortgages or other instruments of writing required by law to be recorded, and the three methods indicated are, by fair and legible "handwriting," "typewriting," or by "printing."

It is obvious that the process of "photostating" or photographic printing cannot be said to come within the meaning of the words handwriting, or typewriting as used in the section, but whether or not the same may be said to come within the meaning of the word "printing" so used, becomes the principal question for consideration.

Since a definition of the word or term "photostating" is unrecorded by lexicographers, owing no doubt to the very recent date of the perfection of such a process, no attempt is made to further define the term, although it is believed that the process as generally understood and employed at the present time may be said to be based purely upon the principles of photography, inasmuch as the process requires the use of a camera, and the photographing of the instrument to be reproduced. Webster's Dictionary defines the word "photography" as follows:

1. The science of the action of light on bodies; the principles of physics and chemistry which relate to the production of pictures by the action of light.

2. The art of producing pictures of objects by the action of light on chemically prepared surfaces as silver, glass, paper, etc.; or the art of receiving and fixing on such surfaces the images formed by the camera.

The same lexicographer defines the word "printing" as follows:

"The act, art, or practice of impressing letters, characters or figures on paper, cloth, or other material, the business of a printer; typography"; Century Dictionary defines the word "printing" as follows:

1. "In general the art or process of making copies or superficial transfers by impression: the reproduction of designs, characters, etc., on an impressible surface by means of an ink or pigment applied to the solid surface on which they are engraved or otherwise formed."

2. "The art or process of producing printed matter for reading, including illustrations, by composition and imposition of types, and their subjection when inked to pressure upon paper in a printing press; the typographic art; typography in the fullest sense."

An examination of the definitions given the words considered, obviously discloses the fact, that the art of photography and that of printing are different arts or sciences, the former being based upon principles involving the action of light and chemical reaction, whereby the exact image or fac simile of the object photographed is reproduced in exact likeness to the minutest detail, while the latter may be said in principle, to be that of reproducing the language

originally used, by the mechanical impression of types or symbols treated with ink or pigment upon impressionable surfaces, and which art obviously does not necessarily contemplate the reproduction of the object or language in the exact image of the original.

It is true the general term "printing" is commonly applied to the process in photography whereby "prints" are obtained from the negative recorded by the lens of the camera, but such printing is thought to be characteristically different, from typographical printing or such as is obtained from mechanical impressions made from types or like character; the former being a "print" as the word is generally used in photography obtained by a chemical process, while the latter may be said to be a process purely mechanical.

Thus it is thought to be concluded that the process of printing as applied in photography is not the same process commonly termed "printing" when such a word is used in its ordinary significance.

Consideration may at this point be given the question of legislative intent in the use of the word "printing" as it occurs in Section 2759, G. C. A brief history of the section reveals the fact that the word "printing" first occurs in the amendment of original Section 1145, R. S., in H. B. No. 578, passed by the legislature May 12, 1902, 95 O. L., 606, and previous to such amendment the section provided that the recorder should record the designated instruments in a fair and legible "handwriting." The words "typewriting or printing" not having been written into the section previous to this time. That is to say, that for approximately twenty years the word "printing" has continued within the written provisions of the section considered. The question may not be asked, did the legislature intend by the act of May 12, 1902, to use the word "printing," in the sense and meaning commonly attributed to the word, i. e., in its typographical sense, or did it intend by the use of the word to include a process involving the principles of photography in the recording of the instruments specified by the section.

In this connection it is believed that the main purpose of the section considered was to require an exact record of the language used in the specified instruments, in order that the meaning, purport, and significance, of such language should be permanently preserved for the purpose of determining the legal rights of parties bound by such instruments, and it is thought the legislature was more concerned in the reproduction of the language used rather than in requiring the exact image or reproduction of the characters and symbols of which such language was composed.

It is not known definitely as to the date of the invention or per-

fection of the process or art called "photostating," however, from information available it is not believed that the process could be said to have existed or been known at the time of the enactment of H. B. No. 12, 1902, and under such circumstances it is hardly possible that the legislature intended by the use of the word "printing" 'to include such a process. It would seem therefore more reasonable to presume, that by the use of the word printing the legislature contemplated the process of typographical printing, or that ordinarily obtained from the use of inks or pigments and the mechanical impression of types upon paper or other impressible surfaces.

Viewed, however, in the light of economy it would seem that such a process might possess many advantages over those methods now employed in the recording of public records, since from information obtainable it is thought the same might save time and labor, as well as being less expensive than the present methods in use. While appreciative therefore of the advantages possibly attainable by the adoption of this modern method of recording public records, yet until such a time as the legislature may see fit to more specifically authorize such a process, I feel unwarranted in concluding that the word "printing" as used in Section 2759, G. C., may be construed to include the process of photostating. Specific answer therefore to your question must be made in the negative.

✽

Section 7604, G. C., Means, First, That in No Event Can a Board of Education Lawfully Deposit School Funds in Any Bank in Excess of the Bank's Paid In Capital Stock, and Second, the Amount of School Funds That May Be Deposited With Any One Bank Cannot Exceed One Million Dollars Unless the Board Finds That it Will Be for the Best Interest of the School District for the Bank to Receive More Than One Million Dollars, in Which Event, the Deposit May Be Any Amount Not Exceeding Five Million Dollars, Provided, However, in All Cases That the Bank's Paid In Capital Stock also Equals or Exceeds the Amount Deposited.

No. 2986—(Opinion Dated April 13, 1922.)

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio:

Gentlemen—Your letter of recent date inquiring whether or not a board of education may, under authority of Section 7604,

G. C., deposit school funds in a bank excess of the amount of the bank's paid in capital stock, was duly received.

Section 7604, G. C., reads as follows:

"Within thirty days after the first Monday in January, 1916, and every two years thereafter, the Board of Education of any school district by resolution shall provide for the deposit of any or all moneys coming into the hands of its treasurer. But no bank shall receive a deposit larger than the amount of its paid-in capital stock and in no event to exceed one million dollars, except that in case the Board of Education shall find that it will be for the best interests of any school district such bank or banks shall be permitted to receive an amount in no event to exceed five million dollars."

The provisions of this section placing a limitation on the amount of school funds that may be deposited in banks first appeared as a part of the act passed April 25, 1904, providing for the reorganization of the common schools of the state. 97 O. L., pp. 334, 351; Section 3968, R. S. That act authorized the board of education to provide by resolution for the deposit of moneys coming into the hands of its treasurer, but subject to the express limitation that "no bank shall receive a larger deposit than the amount of its paid in capital stock, and in no event to exceed three hundred thousand dollars (\$300,000)." The sectional number was changed in the revision or codification of the Ohio Laws in 1910, and is now designated as 7604 of the General Code. While the section, under the new designation, has been amended four times, the express limitation that "no bank shall receive a deposit larger than the amount of its paid in capital stock," has never been eliminated. Sec. 101, O. L. p. 290; 106 O. L., p. 328, 108 O. L., pt. 1, p. 20; 109 O. L., p. 215. The scope of the four amendments may be briefly summarized as follows: The first changed the word "may" in the first sentence of the 1910 revision to "shall"; the second required the board to make provision every two years for depositing the school funds; the third raised the maximum amount that could, in any event, be deposited, from \$300,000 to \$1,000,000; and the fourth added the last clause of the section as now in force relative to the \$5,000,000 maximum.

The evident purpose of Section 7604, G. C., throughout its entire history has been to provide for the security of school funds, and the principal safeguard provided for in both the original and the amendatory sections was and still is that found in the provision that no bank shall receive an amount larger than the amount of its paid in capital stock, and in my opinion none of the other provisions.

of the section can be so construed or applied as to authorize the board to deposit with any bank funds in excess of that amount..

After careful consideration we have reached the conclusion, and so advise you, that Section 7604, G. C., means, first, that in no event, and under no circumstances, can a board of education lawfully deposit school funds in any bank in excess of the amount of the bank's paid in capital stock; and, second, that no matter how large the bank's paid in capital stock may be, the amount of school funds that may be deposited with it cannot exceed \$1,000,000 unless the board finds that it will be for the best interests of the school district for the bank to receive more than \$1,000,000, in which event the deposit may be any amount not exceeding \$5,000,000, provided, however, in all cases, that the bank's paid in capital stock also equals or exceeds the amount deposited.

For definitions of the words "paid in capital stock," as used in the section, see 1918 Opinions of the Attorney General, volume 2, p. 1435; also 1912 Opinions of the Attorney General, volume 1, p. 192.

✽

The Certificate Required by Section 5649-1b General Code, (Griswold Bond Act) Should Include a Statement to the Effect That the Bonds Authorized by the Resolution, Ordinance or Other Measure Have Been Issued—That is, That They Have Been Sold and are in Process of Delivery. No Schedule of the Amount Required Each Year for Payment of Bonds and Interest Need be Filed.

No. 3045—(Opinion Dated May 1, 1922.)

Tax Commission of Ohio, Columbus, Ohio.

Gentlemen: The Commission requests the opinion of this department as to the interpretation of certain provisions of section 15 of the so-called Griswold Law, 109 O. L. 336-344 therein designated as section 5649-1b of the General Code.

The Commission's letter is as follows:

"Section 15 of the Griswold Law provides that 'every such resolution, ordinance and measure shall be certified by the fiscal officer of political sub-division to the county auditor in which the sub-division is located. Thereafter, the county auditor, without further action by the tax levying authority of the sub-division shall include said annual levies in the appropriate annual budget * * *.'"

Question: What constitutes a sufficient certification to the county auditor to warrant him in submitting said levies to the budget commissioners

First: Should there not be a certificate of the fiscal of-

ficer accompanying the certification of the bond resolution declaring that the bonds had actually been sold and delivered?

Second: Should there not be a schedule with the above certification showing the specific amount required each year for the payment of bonds and interest as they become due?"

A more complete quotation of the section which requires interpretation may be made:

"Section 15. The resolution, ordinance or other measure under which bonds are issued or authorized shall contain a levy of taxes sufficient to pay the interest and principal of the bonds as they mature and every such resolution, ordinance or measure shall be certified by the fiscal officer of the political subdivision to the county auditor of the county in which the subdivision is located. Thereafter, the county auditor, without further action by the tax-levying authority of the subdivision, shall include said annual levies in the appropriate annual budgets submitted by him to the budget commissioners as provided in section 5649-3c of the General Code, including the county budgets; * * *"

Let it be observed that the first sentence of this section provides that "every such resolution, ordinance or measure shall be certified" without stating when the certification shall take place. In the absence of a time provision, the ordinary rule of construction would be that certification should be made within a reasonable time after the occurrence of the fact to be certified to, having regard to the purpose of the certification. The purpose of the certification in this instance is the levy of taxes. By section 14 it is provided that the first maturity of any issue of bonds shall be fixed not earlier than the date fixed by law for the final settlement between the county treasurer and the political subdivision of the taxing district next following the inclusion of a tax for the issue in the annual budget by the county auditor. It is obvious, therefore, that the certification would be ineffective unless made in time for the inclusion of the tax to meet the first maturity and the final installment of interest; and inasmuch as the maturities must be "in substantially equal annual installments", it follows that the first tax levying period following the issuance of the bonds is the last date at which the certification can be made with effect.

On the other hand, however, bonds are frequently authorized and are not issued or sold for some time, due to conditions in the market or to defects in the procedure which have to be remedied. Therefore, to hold that the certification should immediately follow the passage of the ordinance would produce an absurd result if the

bonds were not issued prior to the tax levying period in question; for the tax would be levied without any bonds to be paid as yet; in fact, such a tax levy might be said to be illegal, as there would be no purpose in existence for which the levy might be made.

It follows from these observations that the certification ought not to be made until the bonds are sold, in order to avoid the absurdity of levying a tax for no purpose whatever.

But in connection with this statement it should be observed that if bonds are authorized, and are not sold prior to the next ensuing tax levying period, the authority to issue them under that ordinance or resolution, expires. The measure will then have to be amended so as to readjust the maturities to a new initial tax levying period. In other words, if bonds that are authorized by a measure becoming effective, say in May, be offered for sale and not disposed of and issued prior to the first Monday in August (see sections 5649-3b and 5649-3c of the General Code), then the subsequent issuance of them under the original resolution or ordinance would be unauthorized and the proceedings would have to be amended so as to postpone the date of the first maturity (which may be assumed to have been fixed with reference to the inclusion of the levy and the date mentioned) for at least another year.

Coming back to the main question, it is observed that section 5649-1b refers to "the resolution, ordinance or other measure under which bonds are issued or authorized." It may be fairly inferred from this language that the bonds must be issued—i. e. sold—before the section applies. In other words, nothing is required to be certified until the bonds are issued. This interpretation is consistent with the practical necessities of the case as above outlined.

It is accordingly the opinion of this department on the first question submitted by the Commission that the certificate required by section 5649-1b should include a statement to the effect that the bonds authorized by the resolution, ordinance or other measure have been issued—that is, that they have been sold and are in process of delivery.

The second question is answered, it is believed, in the language of the section itself, which requires merely that the resolution, ordinance or measure shall be certified. This measure will of necessity fix the amount of the entire issue maturing in each year, and the rate of interest and date of payment of interest. From these facts apparent on the face of any ordinance that is properly drawn, the county auditor can for himself ascertain the exact amount required each year for the payment of bonds and interest. If the

ordinance does not disclose these facts it is not a valid ordinance under section 14 of the Griswold Act (section 2295-12 G. C.) That section which has been referred to in this opinion provides as follows:

"Section 14. All bonds hereafter issued by any county, municipality, including charter municipalities, school district, township or other political subdivision, shall be serial bonds maturing in substantially equal annual installments beginning not earlier than the date fixed by law for the final tax settlement between the county treasurer and the political subdivision or taxing district next following the inclusion of a tax for such issue in the annual budget by the county auditor as provided by law and not later than eleven months thereafter."

It is true that this section does not expressly say that the maturities of the bonds and the rate and payment periods of the interest shall be fixed in the resolution or ordinance itself, but that is a fair inference from its provisions. In many, if not all, instances of statutes authorizing the issuance of bonds for specific purposes, it is expressly provided that the resolution or ordinance authorizing such issuance shall contain these particulars. See section 3917 G. C. which provides that:

"Such resolution shall * * * state * * * the aggregate amount of bonds to be issued * * * their number and denomination, the date of maturity, the rate of interest they shall bear, and the place of payment of principal and interest."

See also section 3939, the initial section of the so called Longworth Act containing the following language:

"In such amounts and denominations, for such period of time, and at such rate of interest, not exceeding six per cent. per annum, as said council may determine."

See also section 2435 dealing with certain county bonds. In short, it is believed that regardless of the specific statutory provisions which may or may not be found in all cases, the determination of maturities, rate of interest, etc. is an essential part of the function of borrowing money and cannot be separated from it, so that the borrowing authority must determine this matter, and cannot delegate it to the purely executive officers who may be called upon to sign and deliver the bonds.

The second question submitted by the Commission is therefore answered in the negative, for the reason that the ordinance, if properly drawn and legal, will show on its face the facts needed by the auditor in order to enable him to discharge his duty under section 5649-1b of the General Code.

SECRETARY OF STATE

NEW CORPORATIONS

The Steubenville Buick Co., Steubenville \$25,000. Daniel L. Feick, Jack M. Murray, W. R. Alban, Sadelle Welday, E. M. Morrow.

The West End Foundry Co., West Park, \$5,000. Anton Kotzab, Joe Zborela, Anton Lohn, Stanislaw Bartling, Andrew J. Mesner.

The Niles Tire & Rubber Co., Niles, \$10,000. Pletcher E. Turrell, H. Lindale Smith, M. L. Merchant, J. M. Whitford, Frank G. Carpenter.

The Berea Constr. Co., Berea, \$10,000. C. E. Wetherwax, Fred E. Peters, W. E. Marsh, M. E. Wetherwax, P. A. Wetherwax.

The Fidelity Bond and Securities Co., Cincinnati, \$5,000. S. A. Thompson, M. C. O'Neil, S. A. Golden, Al. J. Straus, Harry Neal Smith.

The William A. Wilson Co., Toledo, \$100,000. William Wilson, Charles B. Inman, Verne J. Brown, Melvin P. Weaver, J. C. Inman, L. J. Deibel.

The W. H. Jones Co., Middletown, \$10,000. C. A. Pardonner, Edward J. Weber, Russell F. Fulmer, M. E. Pardonner, G. B. Weber.

The Prudential Svgs. Ass'n. Akron, \$3,000,000. M. D. Brooks, M. R. Hoffman, William M. Moore, Owen P. Moore, L. W. Rinear.

The Starrett-Moore Co., Canton, \$20,000. J. A. Starrett, Budd M. Moore, Marry E. Starrett, Edw. L. Stump, Ethel E. Moore.

The Suburban Svgs. & Loan Co., Worthington, \$100,000. W. W. Fuller, F. W. Scott, Charles D. Lehman, Howard Potter, Burton S. Wellman, George W. Beaver.

The Craftsman Garage & Sales Co., Mayfield Twp. Cuyahoga Co., \$10,000. Victor C. Lynch, Harland H. Wilson, Frank Durdin, Lula H. Wilson, Margaret Durdin.

The Alpha Lodge No. 1. I. B. P. O. E. of W. Building Co., Cincinnati, \$15,000. Albert Finley, Ben Hatcher, John Moses, R. V. Pendleton, James Toran.

The Reliable Auto & Dump Trucking Co., Cleveland, \$20,000. Charles F. Marz, Edward J. Mrazek, John J. Blaha, William M. Zelenka, Stanley J. Uhler.

The Fickel Bros. Tire Co., \$1,000.

Cleveland, F. L. Fickel, A. A. Fickel, Frank F. Gentsch, R. L. Kornfeld, F. M. Pritts.

The Litewell Fixture Co., Youngstown, \$1,000. Louis Marmorek, Rosemary Dignan, Murray A. Nadler, A. M. Pierson, I. Freeman.

The John R. Stewart Co., Columbus, \$500. R. P. Miller, R. E. McCollum, S. H. Parker, I. C. Robinson, J. C. Evans, F. B. Mitchell.

The Guaranteed Parts Co., Cleveland, \$10,000. John H. Heminger, Roderick McRae, N. H. Donnellon, A. Gottfried, Al. Benyon.

The Beelick Knob Coal Co., Cleveland, \$25,000. Frank Harrison, Stuart L. Lapp, Charles C. Owens, N. M. Odenkirk, Helen G. Prucha.

The Greencamp Cooperative Elevator Co., Greencamp, \$30,000. W. S. Ruth, H. S. Beaver, J. M. Wolfinger, F. L. Bricker, Ora Weiss.

The Initial Candy Co., Cleveland, \$20,000. H. Lindale Smith, M. L. Merchant, John Doy, John Miehs, Chas. L. Warner.

The Readingdale Realty Co. Cincinnati, \$25,000. Alfred J. Liebman, Walter Mayer, Edna W. Liebman, Nan L. Mayer, Alfred Mack.

The Managers Finance Co., Cincinnati, \$500. Thomas L. Sidlo, Benj. F. Fiery, M. J. Monahan, M. G. O'Brien, B. W. Jacobi.

The Uhrichsville Theater Co., Uhrichsville, \$50,000. James S. Beck, Mary W. Beck, J. J. Pearce, Grace H. Pearce, W. B. Stevens.

The Renner-Kline Coal Co., Boliver, \$50,000. John M. Renner, Byron R. Barder, Herbert Scheidler, Frank E. Ream, John C. Frank.

The Monarch Glass Co., Bellaire, \$500. J. A. Norrington, Louis M. Dugs, A. J. Rowing, J. L. Kennedy, Samuel Lubalsky.

The Calaseptine Co., Canton, \$1000. F. B. Woods, Luther Smith, William R. Taylor, Bertha L. Smith, F. P. Calhoun.

The Sandusky Realty Co., Cleveland, \$5,000. Morris Moskowitz, A. E. Bernstein, M. L. Bernstein, Irene Nungesser, H. J. Tabor.

The Investor's Protection Co., Dayton, \$1,000. Elmer Zinn, P. E. Zinn, J. H. Detter, C. Detter, Ralph Damer.

The Barnes Motor Co., Cleveland, \$200,000. Monroe A. Loeser, Ira J. Warner, H. Stewig, Irwin N. Loeser, I. L. Nichols.

The Kissick-Aring Co., Cleveland, \$500. J. J. Kissick, M. J. Aring, Edward W. Leeper, E. C. Boer, Ralph T. Hisey.

The Carnegie Body & Top Co., Cleveland, \$10,000. Cleveland, J. Suffens, Vivian Falle, F. I. Werley, Wm. M. Bassichis, D. A. Levine.

The Green Marine Directory of the Great Lakes Co., Cleveland, \$15,000. G. E. MacVeen, D. T. Miller, F. U. Mowll, L. M. Stokes, Geo. B. Baer.

The Tracy-Schullman Co., Columbus, \$500. O. L. Harvey, H. B. Lindimore, H. H. Metcalf, E. A. Reeder, V. K. McGonagle.

The Great Central Casualty Co., Columbus, \$100,000. B. B. Paddock, Byron Yakely, J. C. Hanna, E. A. Reeder, J. B. Kahle.

The L. & E. Amusement Co., Cleveland, \$1,000. Arthur Krause, Harry Levy, Chas. Ellison, A. Barbian, I. S. Hurwitz.

The Electric Research Co., Cleveland, \$500. H. R. Palmer, Wayne Eberly, L. A. Pickering, J. J. Sloan, Carl A. Hope.

The Empire Petroleum Co., Toledo, \$300,000. Richard D. Logan, Ellery G. Bean, Chas. H. Lemmon, Robert Newbegin, Milo J. Warner.

The Tarvin Co., Cincinnati, \$15,000. H. K. Tarvin, Calista Tarvin, Edward E. Quereau, Paul J. DeCarlin, Petro De Carlis.

The Gillmore-Thomas Co., Cleveland, \$10,000. Quartus A. Gillmore, Arthur R. Thomas, Howard A. Thomas, Margaret M. Stowe.

The Portage Lakes Electric Light Co., Akron, \$2500. Herbert C. Tinker, P. C. Collins, W. J. Wood, H. G. Goodwin, Frank Selzer.

The John D. Knight Co., Cleveland, \$60,000. John D. Knight, John J. Meder, Arthur D. Baldwin, Philip R. White, Carl A. Hope.

The M. Lager and Co., Cleveland, \$5,000. E. J. Hopple, Joseph S. Silber, C. Gottfried, H. S. Gottfried, J. J. Nessay.

The Mevers Lake Miniature Railway Co., Warren, \$5,000. M. B. Taylor, Jr., Ruth Whitney, Emma Kistler, Mary S. Bishop, Elizabeth Baldwin.

The C. Hunsinger & Brother Cartage Co., Youngstown, \$10,000. Chas. Hunsinger, Elizabeth Hunsinger, Re-

becca Hunsinger, Ellen Hunsinger, Freas Hunsinger.

The Tri-State Pipe Co., Bellaire, \$25,000. Simon Axelrod, S. V. Benton, J. E. Green, A. Dittrich, Ralph Lebow.

The L. P. Bailey Co., Tacoma, \$150,000. L. P. Bailey, O. J. Bailey, J. S. Bailey, A. C. Bailey, C. R. Patten, F. R. Bundy.

The Anderson-Kelso Co., Marietta, \$10,000. R. F. Anderson, K. L. Kelso, J. F. Kelso, Fred O. Reichardt, James A. Bowman.

The Forest City Wrecking Co., Cleveland, \$10,000. Arthur E. Berko, I. Goldstein, David Goldstein, Paul Apple, Edward Polene.

The Cantwell Building Forms and Material Co., Marion, \$75,000. E. A. Cantwell, Geo. T. Cleveland, Edw. L. Stuber, C. R. Adams.

The Ehring's Attractions Co., Columbus, \$10,000. Mattie F. Anderson, Erwin Messmer, Eva Hardin, Joseph Anderson, Chas. McMasters.

The Rinker Safety Supply Co., Columbus, \$10,000. S. A. Scatterday, John H. Hunt, J. L. Adkinson, Ada M. Johnson, J. R. Rinker.

The Postal Buildings Co., Cleveland, \$500. Roscoe M. Ewing, James L. Lind, O. P. Moon, Anna L. Schmoldt, E. L. Heasley.

The Franklin-Kent Co., \$500. F. S. Whitcomb, Stuart L. Lapp, Howard L. Barkdull, Charles C. Owens, Helen

The Guilford Co., Cincinnati, \$100,000. Ferdinand A. Wagner, Herman A. Bayless, E. M. Grooms, Frank H. Cole, Jr., John R. Schindel.

The Cascade Printing & Pub. Co., Elyria, \$3,000. Harry Gadel, C. E. Bruck, Geo. Beaver, F. C. Smith, Harry Hinkson.

The Sun Mortgage Loan Co., Findlay, \$500. L. W. Kiene, Chester Pendleton, J. O. Reed, Al Bloomingdale, W. A. Hollington.

The Peoples Mercantile Co., Cincinnati, \$5,000. Louis Weiland, Herman H. Schrader, H. J. Schwer, Joseph Gineburg, Jack Balkin.

The Mt. Ephraim Oil and Gas Co., Mt. Ephraim, \$10,000. W. S. Watson, J. T. Watson, E. R. Dutton, R. H. Watson.

The West Side Tailoring Co., Cleveland, \$6,000. Luigi Confessore, Lorenzo Scalmato, Domenica Nunnari, Angelo Repefi, Ignazio Paglise, Salvatore Coniglio.

The Hodges-Erwin Co., Cincinnati, \$100,000. J. E. Hodges, August Silk, Frank M. Erwin, Albert H. Morrill, G. A. Ginter.

The Leipsic Svgs. & Loan Co., Leipsic, \$250,000. George G. Reining, Chester Pendleton, J. Frank Axline, Annetta Dorsey, C. L. Rutter.

The Bethel Journal Co., Bethel, \$10,000. Milo J. Harris, Helen W. Harris, Florence G. Butler, E. B. Sidener, Chas. H. Sudener.

The Consolidated Auto Service Co., Barnesville, \$20,000. A. W. Laughlin, F. C. Hibbard, D. O. Sheppard, M. A. Reed, C. A. Urban, Abel Williams.

The Bradner Dairy Co., Bradner, \$10,000. H. A. Forrister, E. T. Whelan, Stephen Zvara, H. H. Harms, C. L. Foster.

The Union Lennox Co., Cleveland, \$1,000. W. M. Baldwin, Allard Smith, Geo. P. Steele, C. W. Carlson, R. C. Hyatt.

The King Tool Grinding Co., Cleveland, \$50,000. W. J. King, John A. Elden, B. W. King, E. Kenneth Reese, M. H. Burns.

The Rotary Bolt and Nut Co., Cleveland, \$40,000. Thomas M. Vodraska, John L. Krejci, William J. Balacek, Mike Krejci, Jaro Vodraska.

The Tuk-Oen Radio Mfg. Co., Cleveland, \$500. John A. Elden, W. A. Tucker, C. S. Tucker, W. C. Owen, Wm. B. Burns.

The Champion Rubber Co., Cleveland, \$10,000. W. H. Stilwell, Geo. W. Coble, Orlando Wilcox, Eugene F. Ast, E. J. Archberger.

The East Palestine Home Co., Palestine, \$10,000. G. W. May, A. S. Leake, Lawrence Cameron, George Nulf, Fred Veon.

The Universal Constr. Co., Cleveland, \$10,000. A. J. Halle, S. H. Kleinman, Jay B. Goodman, Philmore J. Haber, B. R. Kohn.

The Universal Health Institute Co., Dayton, \$5,000. E. R. McKnight, Harvey I. Allen, George S. Lott, E. C. Harley, Bert B. Brady.

The Winchester Oil and Gas Co., Winchester, \$30,000. Thomas J. Hartley, Connor Dunlap, G. A. Marks, F. C. Leeds, Robert Swinger.

The State Paper Co., Zanesville, \$100,000. William W. Hanlon, Nelle B. Hanlon, Frank F. Hanlon, Ralph R. Hanlon, Majorie L. Hanlon.

The Asquam Constr. Co., Toledo, \$50,000. Theodore Teuscher, Leet J.

Deibel, Manuel F. Felt, Minnie Felt Teuscher; Chas. W. Davis.

The Dandee Line Knitting Mills Co., Cleveland, \$10,000. Charles Gilman, Walter Reynolds, Irving A. Sims, Mannie R. Stone, Chas. A. Lefkovitz.

The Cleartone Radio Co., Cincinnati, \$10,000. Walter J. Herschede, Walter Eberhardt, James R. Clark, William J. McCauley, Burton E. Robinson.

The American Gilsonite Prod. Co., Toledo, \$35,000. Willard F. Wilder, Chas. H. Brady, James P. Schrider, Elsie M. Wehrle, Mayno Harr.

The Shaw Cut Rate Tool Co., Youngstown, \$10,000. Harry Shaw, Anna Shaw, Hyman Gelman, Isidor Cahn, A. M. Pierson.

The Cramer-Maerkle-White Co., Cleveland, \$5,000. Charles G. White, H. S. Huxtable, T. D. Ahhle, Geo. I. Cramer, F. W. Maerkle.

The Quantity Surveys Co., Cleveland, \$10,000. L. S. Sobel, W. H. Hasselman, E. Zalad, N. Bonnist, H. Dobrin.

The North Dayton Amusement Co., Dayton, \$5,000. Thomas J. Kelly, Pauline Turcheck, Guy H. Wells, Geordon M. Niles, M. L. C. Weis.

The Columbus Yellow Cab Co., Columbus, \$1,000. R. E. Westfall, Smith W. Bennett, R. L. Spencer, E. B. Arbuckle, Hugh M. Bennett.

The Excel Tire & Rubber Co., Wadsworth, \$500. Fred F. Falk, Elton J. Brouse, Z. N. Wallis, Robt. H. Stevenson, W. I. Dague.

The Gordon Plumbing Co., Cleveland, \$10,000. A. I. Soltz, M. Christopher, S. I. Powell, A. T. Miller, M. E. Blum.

The Columbus Securities & Realty Co., Columbus, \$10,000. J. P. Bliss, M. Slupe, L. K. Bergin, M. B. Cain, A. M. Kirchner.

The Citizens Oil & Gas Co., Mt. Vernon, \$50,000. F. J. Harris, French W. Severns, H. V. Smoots, B. F. Salisbury, R. J. Salisbury.

The H. J. McCue Co., Cleveland, \$500. J. H. McCue, Frank S. Goll, Asher Levin, Hovey S. Gamble, Albert Sheftel.

The Gibraltar Realty Co., Cleveland, \$500. James M. Saunders, E. J. Bundy, R. E. Nixon, Fred Burks, J. R. Kistner.

The E. A. Prentice Lumber Co., Columbus, \$150,000. E. A. Prentice, A. D. Rodger, Bertha L. Prentice, Jno. W. Parent, Jno. L. Jones.

The Herbe Paper Box Co., Columbus, \$100,000. Wilhelmina Eckhardt, C. W. Reiber, A. F. King, Lydia M. Reiber, R. M. Lucas.

The E. G. Harrison Co., Barnesville, \$275,000. E. G. Harrison, Minnie K. Harrison, Emma Talbott, W. R. Harrison, Julia K. Hibbard.

The Weller Co., Cuyahoga Falls, \$10,000. H. L. Weller, P. C. Albertson, Bessie Weller, Clifford Pease, Fred W. Weller.

The Bocel Co., Dayton, \$10,000. Samuel S. Markham, Abraham K. Meck, Robert J. Landis, Claudia K. Engle, Clifford R. Curtner.

The Rothbrand Co-operative Cloak Co., Cincinnati, \$25,000. Louis Weiland, Jacob Roth, Osias Roth, John Friedman, Aaron Canner.

The Greenwich Clay Products Co., Greenwich, \$25,000. W. H. Noble, Chas. McLaughlin, K. C. Jenney, C. A. Ingersoll, F. H. Tenney.

The Rupp Shear and Forge Co., Cleveland, \$20,000. L. W. Ulmer, Peter F. Hable, August Hurschmorn, Max Glick, Harry Feldman.

The Carnahan Fire Alarm Co., Cleveland, \$750,000. Ellsworth Jeffrey, F. A. Marack, G. L. Goddard, H. L. Stuhlberger, J. G. Baohman.

The Anglo-American Savbgs & Loan Co., Cleveland, \$1,000,000. R. W. Sanborn, A. W. Maire, A. C. Trutta, H. F. Pattie, C. T. Rich.

The Morris-McDonald Co., Cleveland, \$25,000. A. R. Johnson, C. B. McDonald, T. F. McDonald, J. R. Morris, E. G. Wilkinson.

The Lyman R. Walker Homes Co., Cleveland, \$500. Edward Younger, L. M. Sewell, Gilbert Morgan, A. J. Pejasa, A. E. Rogers.

The Reins & Meiss Co., Cincinnati, \$575,000. Isinore Reins, Lester Reins, Milfred D. Meiss, Bertrand L. Meiss, Leon Meiss.

The Woodside Land & Mortgage Co., Cleveland, \$25,000. W. J. Burns, Edward Nank, Emma Nank, Mary Nank, M. A. Burns.

The Merchants Vehicle Co., Columbus, \$5,000. G. L. Hickel, J. W. Dinsmore, C. S. McCathron, F. E. Kochee.

The Business Exchange Co., Cincinnati, \$20,000. Walter E. Falk, J. H. Pride, Leonard F. Dawson, Charles W. Brumell.

The Bellevue Packing Co., Bellevue, \$56,000. Chas. Zehner, J. R. Loudenslager, Henry Schlicht, Carl Zehner,

P. J. Furlong, Jas. W. McClain, L. P. Furlong.

The American Securities Co., Canton, \$400,000. H. M. Geiger, H. B. Potter, H. Merrifield, H. V. Briggie, J. E. Kinnison.

The Staten-Forrester Mfg. Co., Dayton, \$10,000. M. F. Staten, J. W. Forrester, J. S. Staten, N. G. Forrester, G. L. Sutton.

The Crowell & Little Securities Co., Cleveland, \$500. I. W. Sharp, Wm. R. Daley, E. Harper, J. H. Kellogg, N. K. Dorr.

The Clifton Manor Co., \$500. Cleveland, Louis S. Arnoff, Louis Kaplan, Chloe Ellis, Ben Kahn, Sadie Arnoff.

The Goosman Piano Co., Toledo, \$1,000. Frederick N. Goosman, Chester E. Colber, Bernice L. Goosman, Charles R. Lee, Lionel Levy.

The Heavy Duty Apron and Rubber Co., Akron, \$5,000. Samuel N. Paradise, Louis H. M. Arenson, Edward Arenson, Nellie Arenson, Bella Paradise.

The Stratemeyer Hardwood Lumber Co., Cincinnati, \$25,000. Otto P. Stratemeyer, Lem S. Miller, Albert Winkelman, W. S. Paxson, Charles H. Elston.

The Columbus Greenhouse Co., Columbia Sta., \$60,000. Jos. J. Gunning, Walter G. Sykes, Ernest C. Buechler, J. A. Matousek, John F. Crowl.

Increases

The Ivanhoe Savings and Loan Co., Cleveland, \$25,000 to \$1,000,000.

The Black-Burn Coal Co., Cleveland, \$200,000 to \$250,000.

The Uhrichsville-Dennison Masonic Temple Co., Uhrichsville, \$20,000 to \$75,000.

The Graves Realty Co., Cleveland, \$50,000 to \$80,000.

The Hardin Mortgage Co., Kenton, \$50,000 to \$200,000.

The Lucky Farmers Exchange Co., Luckey, \$50,000 to \$100,000.

The Sun Pub. Co., Springfield, \$15,000 to \$200,000.

The Hygeia Paper Container Co., Toledo, \$25,000 to \$300,000.

The Collingwood Masonic Bldg. Co., Toledo, \$15,000 to \$25,000.

The East Iron & Machine Co., Lima from \$400,000 to \$500,000.

Decrease

The Cincinnati Transfer Co., Cincinnati, from \$50,000 to \$25,000.

PUBLIC UTILITIES COMMISSION

No. 2420—In the Matter of the Application of The Rock Creek Electric Light & Power Company to Issue and Dispose of Common and Preferred Capital Stock. Prayer Granted.

(Dated May 25, 1922)

This day, after full hearing, due notice of the time and place of which was given to all parties in interest, this matter came on for final consideration upon the application of The Rock Creek Electric Light & Power Company, (a corporation duly organized and existing under and by virtue of the laws of the State of Ohio), asking the consent and authority of this commission to the issue and disposition of its common capital stock of the par value of \$5,000.00 and its seven percent cumulative, preferred capital stock of the par value of \$10,000.00, the proceeds arising from the sale thereof to be used to pay its organization expenses, purchase material and construct and equip an electrical utility for the furnishing of service to consumers in and about the village of Rock Creek, Ashtabula County, Ohio, and to provide itself with an adequate working capital; the objections thereto, and the record made upon said hearing.

The commission, being fully advised in the premises, finds that the applicant has under contract, or in contemplation, the construction, equipment and operation of an electrical utility furnishing service to consumers in and about the village of Rock Creek, Ashtabula County, Ohio, which, with an adequate working capital and including the cost of its organization, is estimated to cost the sum of \$13,500.00, and that the issue of applicant's common capital stock of the par value of \$5,000.00 and its preferred capital stock of the par value of \$10,000.00 is reasonably required and the money to be procured thereby, necessary for the construction, completion, extension and improvement of applicant's facilities and the maintenance and improvement of its service, as aforesaid, and is satisfied that consent and authority for the issue and disposition of said capital stock should be granted.

It is, therefore,

Ordered, That said The Rock Creek Electric Light & Power Company be, and hereby it is authorized to issue its common capital stock of the par value of five thousand dollars (\$5,000.00) and its seven percent cumulative preferred capital stock of the par value of ten thousand dollars (\$10,000.00), and that said capital

stocks be sold for the highest price obtainable but not less than the par value of said common capital stock nor less than eighty-five (85) percentum of the par value of said preferred capital stock. It is further

Ordered, That any discount arising from a sale of said preferred capital stock for less than the par value thereof be extinguished pursuant to the rules and regulations heretofore prescribed by this commission. It is further

Ordered, That the proceeds arising from the sale of said capital stock be, by the applicant, devoted to and expended for the following purposes, and no others, to wit:

Purchase of real estate	\$ 600.00
Purchase of building	1,200.00
Purchase of Boos oil engine.....	3,675.00
Purchase of generator and switchboard.....	1,750.00
Purchase of 56 poles @ \$12.00.....	672.00
Purchase of 3000' No. 4 weatherproof wire 492.....	98.40
Purchase of 200 glass insulators @ 27c.....	54.00
Purchase of 28 crossarms @ 40c	5.60
Purchase of 56 braces for crossarms @ 14c.....	7.84
Labor for setting poles, 260 hours @ \$1.00.....	260.00
Labor for running lines, 260 hours @ \$1.00.....	260.00
Freight and hauling	60.00
Legal fees and charges	400.00
Working capital	4,457.16
	\$13,500.00

as more fully set forth in the detailed statement, marked "Exhibit A" filed herein January 11th, 1922, which statement hereby is made a part of this order by reference. It is further

Ordered, That the applicant make verified report to this commission, semi-annually, within fifteen days after the close of each calendar, semi-annual period of the issue and disposition of said capital stock and, in full detail, the expenditure of the proceeds thereof pursuant to the terms and conditions of this order.

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 3

No. 2161—C. C. Long, Complainant, vs. The Northwestern Ohio Light Company, Defendant.

(Dated May 9, 1922.)

This matter comes before the commission upon a complaint, filed by C. C. Long, a rural consumer of defendant's electric lighting service, residing outside of Delphos, Ohio, against the rates

now being charged by the defendant company, in accordance with its P. U. C. O. No. 2, second revised, page No. 8, for such service, and was submitted on said complaint, the answer filed by the company and the evidence introduced at a hearing held July 28th, 1921.

After considering all the evidence and the independent investigation made by the commission of the company's property and books, the commission finds:

That the present value of the portion of defendant's property used and useful in the furnishing of electrical service to complainant and nine neighboring rural consumers, known as the Ford Quarry line, as of July 1st, 1921, is the sum of \$765.61;

That the reasonable operating expenses incident to the furnishing of defendant's rural lighting service to said ten consumers will be the sum of \$159.63;

That a reasonable charge for depreciation is five per centum of the aforesaid present value of said property, or the sum of \$38.28;

That a fair rate or return to the defendant for the use of its said property in the furnishing of said service will be eight per centum of said present value of said property, or the sum of \$61.25;

That the total operating revenues to be derived from the furnishing of said service is the sum of \$258.56, and

That the following schedule of rates, applied to said service, will produce such operating revenues, viz:

Rural Lighting Service

(To govern rural community in the vicinity of Delphos, Ohio)

For the first 50 k. w. h. 15c per k. w. h.

For the next 50 k. w. h. 14c per k. w. h.

For the next 50 k. w. h. 13c per k. w. h.

In excess of 150 k. w. h. 12c per k. w. h.

Minimum charge\$1.50 per month

Discount on bills for energy, if paid on or before the tenth day of the month following that in which service is furnished, 1c per k. w. h.

That the aforesaid schedule of rates and charges for the furnishing of defendant's electric lighting service to rural consumers outside of the corporate limits of, and in the vicinity of Delphos, Ohio, is just and reasonable, and

That defendant's present schedule of rates and charges for such service is unjust and unreasonable insofar as it exceeds the said schedule of rates and charges for such service.

It is, therefore,

Ordered, That defendant, said The Northwestern Ohio Light Company be, and hereby it is notified, directed and required to cease and desist from maintaining, imposing, charging and collect-

ing or attempting to maintain, impose, charge and collect for the furnishing of electric lighting service to rural consumers located outside of, and in the vicinity of Delphos, Ohio, rates and charges in excess of the rates and charges hereinbefore found and determined to be just and reasonable for such service. It is further

Ordered, That defendant's schedules be modified and amended accordingly.

3

No. 2548—In the Matter of the Joint Application of John H. Foerster and The Cleveland-Independence-Brecksville Bus Line Company for Consent and Authority to Sell and Purchase Public Utility Property. Prayer Granted.

(Dated May 19, 1922)

This day, after due notice to all parties in interest, this matter came on to be heard and was heard upon the joint application of John H. Foerster, the owner and operator for the past eleven years, of a bus line operating between the city of Cleveland, Ohio, and the village of Independence and Brecksville, Ohio, and The Cleveland-Independence-Brecksville Bus Line Company, a corporation duly organized and existing under and by virtue of the laws of the State of Ohio; asking the consent to and approval, by this commission, of the sale by said first named applicant and the purchase by the latter of all the property, rights and other assets of the said John H. Foerster used and useful in the operation of said bus line, and consisting, generally, of three automobile busses, one service truck and supply of spare parts and materials.

The commission, being fully advised in the premises, finds:

That, for purchase and sale purposes, the value of said bus line property, composed as aforesaid, is the sum of \$15,000.00, and

That the public will, upon the consummation of said proposed sale and purchase of said property, be furnished adequate service for a reasonable and just rate, rental, toll or charge therefore,

and is satisfied that consent and authority for said proposed sale and purchase of said property should be granted. It is, therefore,

Ordered, That the said John H. Foerster be, and hereby he is authorized to sell to The Cleveland-Independence-Brecksville Bus Line Company all of the property, rights and other assets composing the motor bus line, by him now operated, between the city of Cleveland and the villages of Independence and Brecksville, Ohio, and

consisting, generally, of three automobile busses, one service truck and a supply of repair parts and materials; and the said The Cleveland-Independence-Brecksville Bus Line Company hereby is authorized to purchase said property, rights and other assets and to pay therefor the agreed consideration of fifteen thousand dollars, payable as in the order, this day made and entered in Proceeding No. 2549, provided. It is further

Ordered, That, forthwith upon the exercise of the authority herein granted, the said applicants file with this commission schedules providing for their respective withdrawal from and inauguration of service within the territory now served by means of said property. It is further

Ordered, That nothing herein shall be construed to be a consent to or approval by this commission of any increase in rates or diminution of service, nor shall the findings hereinbefore set forth as to the value of said property, rates and service, or the acquiescence in the passing of said agreed consideration, be binding upon this commission in any future proceeding involving rates and/or service.

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Advanced Utility Rate Proceeding No. 12—In the Matter of the Proposed Increased Rates of the Central Union Telephone Company for Local Exchange Service at Toledo, Ohio. Rates Fixed.

(Dated May 26, 1922.)

This matter coming on this day in pursuance of the investigation, heretofore instituted, to determine the reasonableness, justice and propriety of the proposed increased rates for local exchange service at Toledo, Ohio, filed by the Central Union Telephone Company, now The Ohio Bell Telephone Company, to become effective July 1st, 1920:

And the commission, coming now to value the property of respondent, said The Ohio Bell Telephone Company, used and useful for the convenience of the public in the furnishing of local exchange telephonic service in its Bell division of the Toledo, Ohio, exchange area, and after considering the inventory of its said property filed herein by said respondent, the evidence and exhibits, and having completed an inventory add valuation of said property, and being fully advised in the premises,

The commission finds and ascertains the value of the several classes and kinds of property of said The Ohio Bell Telephone Com-

pany used and useful for the convenience of the public in the furnishing of telephonic service in the Bell division of the exchange area of Toledo, Ohio, and of said property as a whole, as of July 1st, 1920, to be as set forth in the following summary, viz:

**The Central Union Telephone Company
Final Summary by Accounts—Toledo, Ohio**

Acct.	Description	Wear and Tear	Depreciation		Present Value
			Percent	Amount	
207	Right of way	\$ 46,229.24	0		\$ 46,229.24
211	Land	189,875.00	0		189,875.00
212	Building	224,944.54	4.0	\$ 8,976.90	215,967.64
221	Cen. Office Tele. Equip....	580,537.94	11.3	65,822.27	514,715.67
222	Other Equip. Cen. Office..	21,176.03	10.3	2,189.27	18,986.76
231	Station apparatus	162,361.47	9.8	15,911.42	146,450.05
232	Station installations	68,447.00	9.8	6,707.81	61,739.19
233	Interior block wires.....	12,708.57	16.8	2,136.07	10,572.50
234	Priv. branch exchanges....	55,250.32	10.8	5,978.74	49,271.58
235	Booths, special fittings....	2,877.00	11.2	319.19	2,557.81
241	Exchange pole lines.....	283,691.57	33.2	94,254.19	189,437.38
242	Exchange aerial cable.....	451,380.32	14.1	63,644.63	387,735.69
243	Exchange aerial wire.....	176,994.59	25.8	45,637.86	131,356.73
244	Ex. underground conduit..	312,806.06	8.1	25,337.29	287,468.77
245	Ex. underground cable.....	312,490.96	9.1	28,436.68	284,054.28
246	Ex. submarine cable.....	3,611.07	5.0	180.55	3,430.52
261	Office furniture & fix.....	15,789.20	10.0	1,578.92	14,210.28
263	General Store equip.....	589.13	15.0	88.37	500.76
264	Gen. stable, garage equip..	18,972.28	20.0	3,794.46	15,177.82
265	Gen. tools, implements....	10,556.00	15.0	1,583.40	8,972.60
	Plant supervision, tool and supply expense....	191,833.74	12.6	24,217.57	167,616.17
	Total physical property....	\$3,143,122.03	12.6	\$396,795.59	\$2,463,326.44
	Preliminary organization, gen. legal and engineer- ing	\$ 44,003.71			\$ 44,003.71
	Organization, general, le- gal, engineering, super- vision, accounting, con- tingencies, casualties and omissions, taxes and interest during re- production	\$ 666,341.86	12.6	\$ 84,120.66	\$ 582,221.20
	Total overhead values.....	\$ 710,345.57		\$ 84,120.66	\$ 626,224.91
	Working capital, includ- ing supplies	\$ 125,724.88			\$ 125,724.88
	TOTAL	\$3,979,192.48	12.1	\$480,916.25	\$3,498,276.23

It is, therefore,

Ordered, That notice of such valuation so placed upon the said property be transmitted by registered letter to said The Ohio Bell Telephone Company, respondent herein, and to the mayor of the city of Toledo, Ohio; all as provided for under Section 499-12 of the General Code of Ohio. It is further

Ordered, That all inventories, valuations, transcripts and exhibits be filed and considered as a part of the record herein. It is further

Ordered, That the commission reserve the right, in the event it shall determine the aforesaid inventory to be incomplete and inaccurate, or that said valuation is incorrect, to make such changes therein as may be necessary before said tentative valuation shall become final.

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No. 2544—In the Matter of the Application of The Willoughby Light & Power Company for Consent and Authority to Issue and Dispose of \$15,000.00 Common Capital Stock. Prayer Granted.

(Dated May 19, 1922)

This day, it appearing to the commission from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, this matter came on for consideration upon the application of The Willoughby Light & Power Company, (a corporation duly organized and existing under and by virtue of the laws of the State of Ohio), asking the consent and authority of this commission to issue and dispose of common capital stock of the par value of \$15,000.00, the proceeds arising from the sale thereof to be used to purchase material and supplies and construct and equip an electric transmission line and distribution system to furnish electrical service to consumers in Willoughby township, Lake County, Ohio.

The commission, being fully advised in the premises, finds from the pleadings and exhibits filed herein and its independent inquiry and investigation thereupon:

That the applicant has in contemplation or under contract the construction and equipment of an electric transmission line and distribution system for the furnishing of electric service to consumers in Willoughby township, Lake County, Ohio, the cost of which has been conservatively estimated at the sum of \$15,000.00, and

That the issue of applicant's common capital stock of the par value of \$15,000.00 is reasonably required, and the money to be procured thereby necessary for the construction, completion, extension and improvement of its facilities as aforesaid,

and is satisfied that consent and authority for the issue and disposition of said common capital stock should be granted. It is, therefore,

Ordered, That said The Willoughby Light & Power Company be, and hereby it is authorized to issue its common capital stock of the total par value of fifteen thousand dollars (\$15,000.00), and that said capital stock be sold for the highest price obtainable but not less than the par value thereof. It is further

Ordered, That the proceeds arising from the sale of said capital stock be, by the applicant, devoted to and used for the following purpose, and no other, to wit: The purchase of material and supplies and the construction and equipment of an electric transmission line and electrical distribution system for the furnishing of electrical service to consumers in the vicinity of the junction of Lost Nation Road and the Lake Shore Boulevard in Willoughby Township, Lake County, Ohio, the cost of which has been conservatively estimated at the sum of \$15,000.00. It is further

Ordered, That the applicant make verified report to this commission, semi-annually, within fifteen days after the close of each calendar, semi-annual period, of the issue and disposition of said capital stock and, in full detail, the expenditure of the proceeds thereof pursuant to the rules and regulations of this commission.



Advanced Utility Rate, Proceeding No. 81.—In the Matter of the Proposed Increased Rates and Charges of The Wildwood Service Company for Water Service in Adams Township, Lucas County, Ohio, Filed to Become Effective March 1, 1922. Rates Fixed

(Dated May 9, 1922.)

The commission having heretofore instituted an investigation concerning the propriety of the increased rates and charges for water service of The Wildwood Service Company, set forth and provided in its proposed schedule, P. U. C. O. No. 1, published to become effective March 1st, 1922, and, coming now to value the property of said respondent, used and useful for the convenience of the public in the furnishing of said water service, and after considering the inventory of its said property filed herein by said respondent, the evidence and exhibits, and having completed an inventory and valuation of said property, and being fully advised in the premises:

The commission finds and ascertain the value of the several classes and kinds of property of said The Wildwood Service Company, used and useful for the convenience of the public in the furnishing of water service in Adams township, Lucas County, Ohio,

and of said property as a whole, as of March 1st, 1922, with the unit prices thereof the fair prices obtaining over the period of five years next preceding said date certain, to be as set forth in the following summary, viz:

Description	Reproduction Value	Depreciation	Present Value
Total property used and useful for domestic service	\$18,544.10	\$ 1,656.08	\$16,888.02
Overheads and Intangibles:			
Omissions, (2%)	370.88	33.12	397.76
Preliminary organization ex- pense	1,000.00		1,000.00
Taxes 1½% for a 6 month con- struction period, 0.375%.....	69.54		69.54
Sub-Total	\$19,984.52	\$ 1,689.20	\$18,295.32
Interest 6% for a 6 month con- struction period, 1.5%.....	\$ 299.77		\$ 299.77
Material and Supplies:			
(None.)			
Working capital	\$ 99.63		\$ 99.63
Total Used and Useful Property	\$20,383.92	\$ 1,689.20	\$18,694.72
Property not used or useful for domestic purposes—fire hy- drants	\$ 658.80	\$ 46.12	\$ 612.68
Total, all Property.....	\$21,042.72	\$ 1,735.32	\$19,307.40

It is, therefore,

Ordered, That notice of such valuation so placed upon the said property be transmitted by registered letter to said The Wildwood Service Company and to the prosecuting attorney of Lucas County, Ohio; all as provided for under Section 499-12 of the General Code of Ohio. It is further

Ordered, That all inventories, valuations, transcripts and exhibits be filed and considered as a part of the record herein. It is further

Ordered, That the commission reserve the right, in the event it shall determine the aforesaid inventory to be incomplete and inaccurate, or that said valuation is incorrect, to make such changes therein as may be necessary before said tentative valuation shall become final.

No. 2376—The Village of Willoughby, Complainant, vs. The Ohio Bell Telephone Company, Defendant.

(Dated May 8, 1922)

This matter came before the commission upon a complaint filed by the village of Willoughby against the rates now being charged by the defendant company in accordance with its P. U. C. O. No. 6, and was submitted on said complaint, the answer filed by the company and the evidence introduced at a hearing held November 17th, 1921.

After consideration of all the evidence and the independent investigation made by the commission of the company's property and books, the commission finds:

That the reproduction value of the company's property, used and useful, as of August 31st, 1921, in its Willoughby, Ohio exchange area is the sum of \$40,479.01, and that the present value of said property, as of said date, is the sum of \$31,417.10;

That the probable operating revenue for one year, based upon charges as provided for in said P. U. C. O. No. 6 would amount to \$20,890.81;

That the reasonable operating expenses for one year would amount to \$17,196.30, leaving a balance for depreciation, interest and dividend charges of \$3,694.31;

That a reasonable charge for depreciation is five percentum of the reproduction value of said property, to wit: \$2,023.95; and

That, after setting aside the above amount for depreciation, there would then be the amount of \$1,670.36 for interest and dividend charges, which said amount is five and three-tenths percentum of the present value of the said property.

The commission further finds that said return of five and three-tenths percentum is not unreasonable and that, therefore, the charges now made by said company for local exchange service in its Willoughby, Ohio, exchange area are not unreasonable, unjust, excessive or discriminatory.

The commission further finds that the complainant withdrew its allegation that proper advertisement of the present schedule has not been made. Therefore, the commission finds, and it is hereby

Ordered, That the complaint heretofore filed herein should be, and the same hereby is dismissed.

ATTORNEY GENERAL

The Sheriff is not Required to Collect Delinquent Taxes Without Process. Actual Distress Authorized Under Section 2658, General Code, Must be Made by the County Treasurer or his Deputy by Virtue of the Process Which the Treasurer Officially Holds in the Shape of his Tax Duplicate. For Making Distress he is Allowed the Fees of a Constable. The Treasurer may also Collect Taxes Under Section 2660, General Code, Which Section Makes Him a Judgment Creditor. He may Then Cause Execution to be Issued to the Sheriff and may Have Attachment Process in Aid of Execution. The Treasurer may also Proceed Under Section 5697 and 5698, General Code, Under Which a Judgment Debtor is not Entitled to any Exemptions. It is the Duty of the Prosecuting Attorney to Represent the Treasurer in any Civil Action Brought in the Name of the Treasurer Under Section 5697, General Code.

No. 3046—(Opinion Dated May 1, 1922.)

Hon. J. Kenneth Williamson, Prosecuting Attorney, Xenia, Ohio.

Dear Sir: Receipt is acknowledged of your recent letter requesting advice of this department as follows:

"The Treasurer of this County has turned over certain delinquent tax statements to the Sheriff of the County requesting that he levy upon goods for the payment of delinquent personal tax.

I know of no authority whereby the Treasurer can do this. The only way I know that the Treasurer can collect delinquent tax is in accordance with General Code Section 2658, by distress, and in accordance with Section 5697, by civil action. Is there any authority whatsoever whereby the Treasurer can delegate this to the Sheriff of the County and is the Prosecuting Attorney required to bring this civil action for the Treasurer in case the Treasurer decides to proceed in accordance with G. C. 5697? If the Treasurer decides to proceed according to G. C. 2658, who actually distrains the goods and chattels charged with such taxes In other words, can the Treasurer delegate this to any other officer?"

Section 2658 of the General Code, to which you refer, provides as follows:

"When taxes are past due and unpaid, the county treasurer may distrain sufficient goods and chattels belonging to

the person charged with such taxes, if found within the county, to pay the taxes so remaining due and the costs that have accrued. He shall immediately advertise in three public places in the township where the property was taken the time and place it will be sold. If the taxes and costs accrued thereon are not paid before the day appointed for such sale, which shall not be less than ten days after the taking of the property, the treasurer shall sell it at public vendue or so much thereof as will pay such taxes and the costs."

Reference may also be made to section 3659 of the General Code, providing as follows:

"For making distress and sale for the payment of taxes, the treasurer shall be allowed the same fees as are allowed to constables for making levy and sale of property on execution. Traveling fees shall be computed from the seat of justice of the county to the place of making the distress."

Section 2834 relating to the duties of the sheriff, provides as follows:

"The sheriff shall execute every summons, order or other process, make return thereof as required by law and exercise the powers conferred and perform the duties enjoined upon him by statute and by the common law."

No express statutory provision has been found authorizing or requiring the sheriff to collect delinquent taxes without process. His duty under the section just quoted is to execute and return process.

The treasurer is not authorized to issue process to the sheriff. Indeed, it does not appear that he has attempted to do so in the case about which you inquire, he having merely turned over the delinquent tax statements and requested the sheriff to levy. The delinquent tax statements do not even purport to be official process. The seizure authorized by section 2658 is analogous to the levy of execution process, but in this case the process is the tax duplicate in the hands of the treasurer. The delinquent tax statement is merely a memorandum of what appears on the face of that duplicate.

On the other hand, section 2658 authorizes the county treasurer, who is the official custodian of the duplicate and the collecting officer, to make the money involved in the collection by summary seizure. This authority runs to the treasurer and to him only. He can delegate the actual seizure of course to any person officially related to him as agent, such as a deputy, but he is not authorized to call upon the sheriff to act as his agent or deputy in the premises.

Accordingly, it is the opinion of this department that the

sheriff is not authorized, much less required, to take any steps whatever by virtue of the action of the treasurer which you describe, and that the actual distress authorized under section 2658 G. C. must be made by the county treasurer or his deputy by virtue of the process which the treasurer officially holds in the shape of his tax duplicate. For making such distress, he is allowed by section 2659 the fees of a constable.

It would, however, be somewhat misleading to say that the sheriff cannot be called upon to exercise the power of his office in aid of the collection of taxes. The treasurer is not obliged in all cases to avail himself of the authority found in section 2658 of the General Code which has been considered. If he is unable to collect any personal taxes by this method, he may proceed under section 2660 of the General Code, which provides as follows:

"If the county treasurer is unable to collect by distress taxes assessed upon a person or corporation or an executor, administrator, guardian, receiver, accounting officer, agent or factor, he shall apply to the clerk of the court of common pleas in his county at any time after his semi-annual settlement with the county auditor, and the clerk shall cause notice to be served upon such corporation, executor, administrator, guardian, receiver, accounting officer, agent or factor, requiring him forthwith to show cause why he should not pay such taxes. If he fails to show sufficient cause, the court at the term to which such notice is returnable shall enter a rule against him for such payment and the costs of the proceedings, which rule shall be enforced by attachment or execution or such process shall have the same force and effect as a judgment at law and as the court directs."

The result of this proceeding is to put the county treasurer in respect of a claim for taxes in the situation of a judgment creditor. He may then cause execution to be issued to the sheriff, and may have attachment process in aid of such execution. Such execution may run against lands as well as goods, and indeed it would seem that the judgment for taxes under section 2660 would be a lien on any lands of the debtor situated in the county where it is obtained, or in any other county to which a transcript thereof may have been taken and might be satisfied out of such lands.

You also refer to section 5697 of the General Code which provides as follows:

"When personal taxes stand charged against a person, and are not paid within the time prescribed by law for the payment of such taxes, the treasurer of such county, in addition to any other remedy provided by law for the collection of

personal taxes, shall enforce the collection thereof by a civil action in the name of such treasurer against such person for the recovery of such unpaid taxes. * * *

Section 5698 provides as follows:

"On the trial of the action provided in the next preceding section, if it is found, that such person is indebted, judgment shall be rendered in favor of the treasurer prosecuting the action as in other cases. The judgment debtor shall not be entitled to the benefit of the laws for stay of execution or exemption of homestead, or other property, from levy or sale on execution in the enforcement of such judgment."

The difference between this section and the one just considered (Section 2660) is that the treasurer is authorized to bring the action provided for in section 5697 in addition to any other remedy provided by law for the collection of personal taxes. It is not necessary in stating a cause of action under section 5697 to show that the treasurer is not able to collect the taxes by distress, as it is in establishing a rule to show cause under section 2660. This is apparent from what has been quoted from section 5697, but is made very clear from sentences which have been omitted from the quotation of that section. Nor for similar reasons would it be a defense to the action, brought under favor of section 5697 to show that the taxes might have been collected by distress.

The result of an action under section 5697 is, however, the same as that under section 2660, as above outlined, with this difference; a judgment debtor is not entitled to any exemptions, so that on execution process (issued in this case as in cases under section 2660 to the sheriff) any and all property of the judgment debtor is subject to be seized and sold. In this respect the sheriff has authority as broad as that of the treasurer when he is proceeding under section 2658 of the General Code for there are no exemptions of taxable property at any rate which may be asserted as against the treasurer's power to distraint.

Section 5671 of the General Code provides inter alia that

"all personal property subject to taxation shall be liable to be seized and sold for taxes."

These statements answer all the questions in your letter excepting the one respecting the duty of the prosecuting attorney to represent the county treasurer in actions brought under section 5697 of the General Code. When section 5697 was originally passed as section 2859 of the Revised Statutes, the treasurer was under the nec-

essity of employing his own counsel. State vs. Commissioners, 26 O. S. 364. Whether he is under such necessity at the present time or not depends upon the interpretation and application to be given to section 2917 of the General Code subsequently enacted. It provides in part as follows:

"The prosecuting attorney shall be the legal adviser of the county commissioners and all other county officers and county boards and any of them may require of him written opinions or instructions in matters connected with their official duties. He shall prosecute and defend all suits and actions which any such officer or board may direct or to which it is a party, and no county officer may employ other counsel or attorney at the expense of the county except as provided in section twenty-four hundred and twelve. * * *

The exception mentioned by reference to section 2412 of the General Code is not applicable to the question which you submit, and it is the opinion of this department that by virtue of the second sentence of section 2917 above quoted, it is the duty of the prosecuting attorney to represent the treasurer in any civil action brought in the name of the treasurer under section 5697 of the General Code.

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The Prosecuting Attorney Should Prepare the Necessary Papers for the County Treasurer in Bringing Action in Foreclosure Under Sections 5718 et seq., General Code, to Enforce the Lien for Delinquent Taxes. As a Precautionary Measure Such Proceedings Might Well be Instituted Prior to May 15, but the Failure of the Treasurer Represented by the Prosecuting Attorney to File a Petition Within That Time Would Not be Fatal.

No. 3103—(Opinion Dated May 16, 1922.)

Hon. C. A. Maxwell, Prosecuting Attorney, Zanesville, Ohio.

Dear Sir: Your letter of May 9th, requests the advice of this department as follows:

"I am writing you for an opinion as to whose duty it is to bring the proceedings for foreclosure provided for under Sections 5718, 5719, 5720, 5721 and 5722 of the General Code. Our county auditor on the fifteenth day of February, 1922, certified to the state auditor a list of some thirty-seven pieces of property that had been delinquent for four years as provided under Section 5718. The state auditor has notified our county treasurer to bring the necessary proceedings as required under

said section for foreclosure of these tax liens on the said property. Recently the treasurer has requested me as prosecuting attorney to bring these proceedings. Section 5722 provides that these proceedings shall be brought by the attorney general. I would like to know whether the attorney general is expecting to take care of these proceedings or whether they are expecting me as prosecuting attorney, to take care of them. According to law the time for bringing the proceedings will expire on May 15th, leaving a very short time in which to prepare the necessary proceedings for so large a number of cases.

The great majority of the cases are tax liens on property that has since been destroyed or removed and there are perhaps very few of them in which the property concerned would anyways near pay the expenses of foreclosure.

Please let me know what I am expected to do in this matter, if anything."

Appreciating the necessity for haste, this opinion will deal very briefly with the questions thus raised.

In the opinion of this department it is the duty of the prosecuting attorney to represent the county treasurer in these cases. The action under Section 5718 is to be brought "in the name of the county treasurer." The petition therein is referred to as the petition of the treasurer. Section 5719 refers to the state as represented through the treasurer. The sections governing the duties of the prosecuting attorney require him to represent county officers in all actions. The reference in Section 5722 to the attorney general is believed to be special. That section provides as follows:

"Sec. 5722. The state, by its attorney general, may bring its action for foreclosure of any delinquent lands upon which the taxes, assessments, penalties and interest have not been paid for a period of four years, in the county in which the land therein described was situated, at the time of the issuance of said certificate, whether the land, city or town lot at the time of the institution of foreclosure proceedings continue to be within the county or not, in like manner as though the land, city or town lot still remained within the limits thereof."

This is a strange provision, but it is clear that it applies only when the land that has become delinquent is at the expiration of the period of four years in a different county from that in which it was at the time of its delinquency. This, of course, could only come about by change of county line. It is, however, the only case in which the attorney general is authorized to bring the action. In cases arising under this section the proper party plaintiff is the

state. In the normal actions referred to in Section 5718, the party plaintiff is the county treasurer.

Your communication also raises the question as to whether these proceedings can be brought later than three months from the date of the filing of the delinquent land tax certificate with the auditor of state. This statement requires consideration of the following provisions:

"Sec. 5718. * * * It shall be the duty of the auditor of state to cause foreclosure proceedings to be brought in the name of the county treasurer, upon each unredeemed delinquent land tax certificate, within three months from the date of filing of such certificate with the auditor of state, by the county auditor. * * *"

Section 5719, referring to the same action, provides in part as follows:

"The owner or owners of such property shall not be entitled to any exemption against such judgment, nor shall any statute of limitations apply to such action."

Section 5713 G. C. also apparently applying to the same action, provides generally for the institution of foreclosure proceedings without any limitation, in the following words:

"The state shall have the right to institute foreclosure proceedings thereon, in the same manner as is now or hereafter may be provided by law, for foreclosure of mortgages on land in this state."

If read in one way, these provisions cannot be mutually reconciled. In the opinion of this department, the phrase "within three months from the date of filing such certificate with the auditor of state" does not relate to the filing of the action, for to take it so relate would be to contradict Section 5719 to the effect that no statute of limitations shall apply to such action. Rather this clause in Section 5718 should be construed as relating to the time within which the auditor of state is required to act. It is his duty "to cause foreclosure proceedings to be brought in the name of the county treasurer," yet the statute shows that the auditor of state has no control over the action itself, not being a party thereto. You state that the auditor of state has notified the county treasurer to bring the necessary proceedings. In the opinion of this department this is all that is required of the auditor of state, and it is this action that must be taken within three months from the time

the certificate is filed with him. State in another way, two officers must act under Section 5718. The auditor of state must "cause foreclosure proceedings to be brought," and the treasurer must file "his petition." If the auditor of state acts within three months it is enough, and as this action has apparently been taken within time in the case about which you inquire, the question as to the effect of the failure of the auditor of state to act within three months need not be considered, though it is possible that the phrase might be read as directory merely.

The doctrine of the cases which requires that a strict construction be given to statutes providing for tax sales does not necessarily apply to these statutes, because the title of the owner can be divested under these sections only in a proceeding to which he is a party and in which he has an ample opportunity to set up any defense which he may have. The proceedings under the statutes formerly in force were *ex parte* and the owner had no personal notice of the tax sale.

It is accordingly the advice of this department that the prosecuting attorney should prepare the necessary pleadings for the county treasurer, and while as a precautionary measure these proceedings might well have been instituted prior to May 15th, it is the best judgment of this department that the failure of the treasurer, represented by the prosecuting attorney, to file his petition within that time would not be fatal.

SUPREME COURT

SYLLABI OF REPORTED CASES

No. 17168—Edward E. Riley et al. vs. Fred B. Rochester et al. Error to the Court of Appeals of Jefferson County.
Hough, J.

1. Reversible error exists in the judgment of a court of appeals where the legal conclusion arrived at is based solely upon a finding of fact which is contrary to the conceded and undisputed facts in the case.

2. Parties, in order to be entitled to protection under the provisions of Section 8543, General Code, by virtue of a recorded lease, as against one prior thereto and unrecorded, must, in fact, have "no knowledge of the existence of such former * * * instrument."

Judgment reversed.

Marshall, C. J., Johnson, Wanamaker, Robinson, Jones and Matthias, JJ., concur.

No. 17158—The City of Bellaire, Ohio, Ex Rel. C. C. Sedgwick, etc., vs. Bellaire, Benwood & Wheeling Ferry Co., et al. Error to the Court of Appeals of Belmont County.
Jones, J.

1. The state has no power to fix ferriage rates over a navigable river from a landing place in a sister state back to its own shore.

2. An ordinance authorizing the ferry owner to charge, for ferrying each way across such river, the sum of thirty cents for twelve tickets, both by its terms and operative effect does fix a rate from a landing place in the jurisdiction of such sister state, and is, in that respect, invalid.

3. Construing Section 3642, General Code, consonantly with the paramount authority of a sister state to fix rates for transportation from its own shore, Held: That such section authorizes only the fixing of rates of transportation from a landing in the Ohio municipality to the opposite shore and does not authorize such

municipality to fix a rate of return ferriage to its own shore.

Judgment affirmed.

Marshall, C. J., Johnson, Hough, Wanamaker, Robinson and Matthias, JJ., concur.

No. 17121—Leroy Lambert, Samuel Frazier and William Conrad vs. The State of Ohio. Error to the Court of Appeals of Ross County, Ohio.
Jones, J.

1. A charge of the court, commenting upon and placing undue weight upon the credibility of circumstantial as compared with direct evidence, is error.

2. Where the defendants have given direct testimony relating to and denying the crime charged, and the state relies on circumstantial evidence for conviction, a charge comparing the quality of such evidence, in the following language, "People lie on the stand or make mistakes, but when you find a circumstance that is proven to be a fact, then of course there is no getting away from the fact," is erroneous.

3. A witness for the state testified in chief, against objection, that he had information from another that a defendant had entered into a deal to commit the crime charged. This was purely hearsay evidence and its admission was error.

Judgment reversed.

Johnson, Hough, Robinson and Matthias, JJ., concur.

Marshall, C. J., took no part in the consideration or decision of the case.

No. 17244—The County Board of Education of Hancock County, Ohio, et al. vs. William Moorehead et al.

No. 17248—The Board of Education of the Vanlue Village School District, Hancock County, Ohio, s. Elmer Oman et al. Error to the Court of Appeals of Hancock county.
Robinson, J.

Section 7630-1, General Code, auth-

orizes the board of education of a district, when such conditions exist in the district as to bring it within the purview of that section, upon the approval of the electors to issue bonds for the purpose of, (1) rebuilding a building destroyed or prohibited, (2) repairing a decayed, injured, dilapidated, partially destroyed or prohibited building, or, (3) constructing a new building to accommodate the pupils of the entire district; and a board of education is authorized to issue the bonds in such an amount as will be required for either one or both of the first two alternatives, or in such an amount as will be required for the last alternative.

Judgment reversed.

Johnson, Hough, Wanamaker, Jones and Matthias, JJ., concur.

No. 17194—Pete Ciano v. The State of Ohio. Error to the Court of Appeals of Tuscarawas County. Matthias, J.

1. Upon the trial of a criminal prosecution, a general objection to the introduction of evidence obtained by search and seizure raises no question other than that of the competency, relevancy and materiality of the evidence tendered, and the court is not required to then examine the collateral question of the regularity of the proceeding whereby such evidence came into the possession of the prosecution.

2. Where the basement of a dwelling house is rented by the owner to another for the storage of raisins, to be delivered by the owner of the premises as sold, which basement contains, in addition to a large number of cases of raisins, six barrels of wine having an alcohol percentage of 11% by volume, which had been there manufactured, a fruit press, rubber hose, barrels and other containers, a finding by the trial court that such premises did not constitute a private dwelling, and that the articles of property enumerated were designed and used for the unlawful manufacture of intoxicating liquor, was warranted.

Judgment affirmed.

Marshall, C. J., Johnson, Hough, Wanamaker, Robinson and Jones, JJ., concur.

No. 17238—Frank F. Cain vs. Thaddeus H. Brown, Assignee of Thomas F. Thornton. Error to the Court of Appeals of Franklin county. Johnson, J.

1. Where a lessee in compliance with the terms of a written lease makes a deposit to secure the performance of the lease on his part, and the lessor exercises his right under the lease to dispossess the tenant and terminate the lease for failure to comply with its terms, the deposit is not forfeited, and the tenant is entitled to recover the balance remaining after deducting accrued rent and damages, if any, sustained by the landlord.

2. The terms of a written lease provided that the lessee should deposit with the lessor on delivery of the lease \$750.00 in payment of the last five months of a five-year term, the lessor to pay lessee as interest the sum of \$37.50 per year during the period prior to the beginning of the last five months. Long before the beginning of that period the lessor exercised his right under the lease to dispossess the lessee and terminate the lease for violation of one of its covenants. Held: The amount of the deposit was not forfeited and lessee was entitled to its repayment to him, less the amount of rent which had accrued at that time and any damages sustained by the lessor.

Judgment affirmed.

Marshall, C. J., Hough, Wanamaker, Robinson and Jones, JJ., concur.

MOTION DOCKET

17376—Frank P. Myers v. Thomas Eikleberry. Motion for an order directing the Court of Appeals of Monroe county to certify its record. Overruled.

17412—The Pennsylvania Railroad Co. v. F. W. Oen. Motion for an order directing the Court of Appeals of Allen county to certify its record. Overruled.

17481—D. W. Murphy v. The American Surety Co. of New York. Motion for an order directing the Court of Appeals of Marion county to certify its record. Overruled.

17490—The Sinclair & Valentine Co. v. The Commercial Poster Co. Motion for an order directing the

Court of Appeals of Cuyahoga county to certify its record. Overruled.

17491—James C. Davis, Director General of Railroads as agent, v. Charles H. Shappell. Motion for an order directing the Court of Appeals of Allen county to certify its record. Overruled.

17493—R. C. Droege v. Leonard Federer, by, etc. Motion for an order directing the Court of Appeals of Cuyahoga county to certify its record. Overruled.

17494—Gerhard J. Schulte, Executor, v. Josephine Hagemeyer. Motion for an order directing the Court of Appeals of Hamilton county to certify its record. Overruled.

17496—Ernest Joseph Lemieux v. Walter J. Kountz, Guardian. Motion for an order directing the Court of Appeals of Lucas county to certify its record. Sustained.

17498—Abraham Silverglade et al v. Francis Von Rohr, by, etc. Motion for an order directing the Court of Appeals of Hamilton county to certify its record. Sustained.

17505—The Board of County Commissioners of Vinton county v. The State, ex rel. Vinton E. Cottrill. Motion for an order directing the Court of Appeals of Vinton county to certify its record. Overruled.

17523—Milton T. Dilts et al. v. The State, ex rel. Edwin A. Hiatt. Motion by defendant to strike petition in error from the files in cause No. 17523 on the General Docket. Sustained.

16989—Alice R. Ruthrauff v. William M. Ruthrauff. Motion for an order directing the Court of Appeals of Greene county to certify its record. (On rehearing.) Overruled.

17314—Frank Burkhart v. Pauline Poorman. Motion for an order directing the Court of Appeals of Williams county to certify its record. Proceeding in error dismissed on motion of plaintiff in error.

17380—The Baltimore & Ohio Railroad Co. v. Fremont O. Phillips. Motion for an order directing the Court of appeals of Medina county to certify its record. Overruled.

17433—The State, ex rel. Smith Hickenlooper, v. Edward S. Beamon.

Auditor. Motion by plaintiff to advance Cause No. 17433 on the General Docket. Overruled.

17436—The State, ex rel. Bearnard C. Fox, v. Edward S. Beaman, Auditor. Motion by plaintiff to advance Cause No. 17436 on the General Docket. Overruled.

17441—The Cincinnati Traction Co. v. Thomas C. Masters. Motion for an order directing the Court of Appeals of Hamilton county to certify its record. Overruled.

17450—Detroit & Cleveland Navigation Co. v. Colby Hade. Motion for an order directing the Court of Appeals of Lucas county to certify its record. Sustained.

17453—The William Powell Co. v. Abraham Ball. Motion for an order directing the Court of Appeals of Hamilton county to certify its record. Overruled.

17456—Katherine Heppel v. City of Columbus. Motion for an order directing the Court of Appeals of Franklin county to certify its record. Sustained.

17457—Frank Moore et al. v. Hannah J. Moore. Motion for an order directing the Court of Appeals of Lucas county to certify its record. Overruled.

17458—The Aetna Casualty & Surety Co. v. The George D. Harter Bank et al. Motion for an order directing the Court of Appeals of Stark county to certify its record. Overruled.

17459—The Robinson Clay Products Co. v. The Geo. D. Harter Bank et al. Motion for an order directing the Court of Appeals of Stark county to certify its record. Overruled.

17469. The Atkins & Pearce Mfg. Co. et al. v. John C. Rogers, a taxpayer, et al. Motion for an order directing the Court of Appeals of Hamilton county to certify its record. Overruled.

17476—Ira R. Pontius, as Supt. of Banks, etc. v. Sears, Roebuck & Co. Motion for an order directing the Court of Appeals of Mahoning county to certify its record. Overruled.

17479—Maud Bucher v. Plymouth Oil & Gas Co. Motion for an order directing the Court of Appeals of

Wayne county to certify its record. Sustained.

17485—The East Ohio Gas Co. v. The City of Cleveland. Motion by defendant to dispense with printing testimony and exhibits in Cause No. 17485 on the General Docket. Sustained.

17489—George Taylor v. City of Toledo et al. Motion for an order directing the Court of Appeals of Lucas county to certify its record. Overruled.

17504—The Kent Savings & Loan Co. v. Herbert S. Thompson, an infant. Motion for an order directing the Court of Appeals of Portage county to certify its record. Overruled.

GENERAL DOCKET

17121—Leroy Lambert et al v. State of Ohio. Ross. Judgment reversed.

17158—City of Bellaire, ex rel. C. C. Sedgwick, Solicitor, v. Bellaire, Benwood & Wheeling Ferry Co. et al. Belmont. Judgment affirmed.

17168—Edward E. Riley et al. v. Fred B. Rochester et al. Jefferson. Judgment reversed.

17194—Pete Ciano v. State of Ohio. Tuscarawas. Judgment affirmed.

17238—Frank F. Cain v. Thaddeus H. Brown, Assignee. Franklin. Judgment affirmed.

17244—County Board of Education of Hancock county et al. v. William E. Moorehead et al. Hancock. Judgment reversed.

17248—Board of Education of Van-lue Village School District, Hancock county v. Elmer Oman, et al. Hancock. Judgment reversed.

16884—The Paige Dairy Co. v. Frederick H. Affield. Lucas. Judgment reversed on authority of Patten v. Aluminium Castings Co., 104 Ohio St.,

17141—The State, ex rel. George E. Falke v. Louis E. Hill et al. Cuyahoga. Dismissed by agreement of parties at costs of defendants in error.

17142—The Bishoprie Mfg. Co. v. William T. Ferguson et al. Hamilton. Judgment affirmed.

17182—Blanche Johnston et al v. Mabel Deaton et al. Champaign. Judgment reversed.

17381—The State, ex rel. Walter Walter Braun v. Frank E. Eigenthaler, Auditor of Sandusky county. In mandamus. Dismissed without record. Costs paid.

17164—L. C. Schendel v. Joseph Bradford, Admr. Cuyahoga. Judgment affirmed.

SECRETARY OF STATE

NEW CORPORATIONS

The American Russian News Pub. Co., Cleveland, \$25,000. Michael Lucak, Michael P. Sekarak, Joseph Hudvabny, Michael Megyas, Theodore Minchik.

The Century Coal Co., Cleveland, \$6,000. Harvey Berman, Albert Griffo, Louis K. Sitko, Irwin Greenberg, Celia Rossi.

The Hampton Amusement Co., Akron, \$50,000. William Hampton, Alfred E. Limber, John Walter LaCue, G. Walter Booth, George T. Smith.

The Community Market House Co., Niles, \$50,000. Nora C. Tigue, William J. Kaye, Margaret E. McCarry, J. W. Israel, W. F. MacQueen.

The Mills Reynolds Co., Akron, \$10,000. Hoyt C. Reynolds, Bertram Mills, Daisy A. Reynolds, Geo. Cross Baner, Julia M. Mills.

The Peoples Svcs. and Loan Co., Garrettsville, \$750,000. A. J. Paine, C. O. Judd, S. H. Bruce, W. H. Ayers, H. L. Thomas.

The Hubbell Rubber Co., Newton Falls, \$500. Charles C. Hubbell, G. F. Hammond, C. J. Hoyt, R. R. Stephenson, Pauline Feibus.

The Cincinnati Capitol Theater Co., Cincinnati, \$100,000. Sigmund Rheinstrom, E. J. Babbitt, Ben G. Bruce, J. T. Chisholm, A. B. Chisholm.

The Albert S. Glascock Co., Cincinnati, \$45,000. Albert S. Glascock, A. B. Chisholm, Ben G. Bruce, Samuel I. Lipp, E. J. Babbitt.

The Star Radio Specialty Co., Norwood, \$10,000. Samuel Levy, George Frank Barron, Ida Adams, Frank Adams, Floyd E. Hauss.

The Royal Revere Radio Co., Toledo, \$10,000. Royal B. Binzer, Roy E. Gindy, Frank Gindy, Bessie Gindy, Clara Goldberg.

The Topping Co., Cincinnati, \$500. W. C. Mardorf, E. A. Mardorf, C. J. Aull, William J. McCauley, A. C. R. Jones.

The Grafton Flour Milling and Grain Elevator Co., Grafton, \$5,000. L. C. Chase, L. B. Fauver, F. L. Hamel, V. Walsh, S. H. Squire.

The Lakeland Beach Co., Big Prairie, \$35,000. J. C. Lake, C. S. Starner, R. R. Sterling, E. M. Fulmer,

A. V. Rush, J. P. Grassbaugh, C. P. Kindig.

The Toledo Industrial Exposition Co., Toledo, \$10,000. Thomas A. De-Vilbiss, Frank B. Anderson, C. E. B. Lamson, Henry Hinde, Walter Hoskin.

The Grand View Realty Co., Akron, \$15,000. John J. McKee, Martin S. Kelly, James P. Groark, Ralph Fox, Proctor Noyes.

The Cincinnati Produce Credit Co., Cincinnati, \$5,000. Chas. H. Grote, Walter A. Ryan, Leonard Gentile, Scott Oyler, Harry Anekenhauer.

The Modern Parlor Furniture Co., Toledo, \$10,000. Frank E. Miller, Stuart S. Wall, Marie Schmidt, Ione Schrinel, Frank M. Coburn.

The Shackless Spring Co., Greenville, \$50,000. A. W. Rush, James H. Westfall, James Lephart, Fred N. Lephart, J. W. Lephart.

The Buckeye Furnace & Sheet Metal Co., Cleveland, \$2,500. A. W. Haiman, D. F. Klein, Nicholas Papp, Wilbur A. LaGanke, E. M. Goodsmith.

The Paumier Harris Co., Canton, \$55,000. Herman J. Paudmer, Edgar Harris, Rose M. Paumier, Leona M. Harris, C. E. Yutzey.

The Home City Real Estate Co., Springfield, \$500. Hugh Hagan, Paul E. Nollen, David F. Snyder, F. M. Hagan, David F. Snyder, A. C. Kaser.

The Barberton Pub Co., Barberton, \$10,000. Harold Mackinson, Frank N. Goethke, Dallas E. Knepper, V. D. Lidyard, A. L. Pittenger.

The Smart Set Auto Engineers Co., Cincinnati, \$10,000. Charles Rittenhouse, William L. Deremo, John Rittenhouse, John Dermo, George E. Pfau.

The Western Supply Co., Cleveland, \$1250. A. D. Dennison, Joseph H. Crowley, M. L. Desenberg, Sidney N. Waitz, Wm. F. Waldeisen.

The Coit Restaurant & Catering Co., Cleveland, \$10,000. Ben Hoffman, Max Anherst, Emrich Krizman, Sam Price, Nathaniel D. Davis.

The H. F. Ehlert Co., Cleveland, \$4800. S. E. Boim, Jos. Engel, Karl A. Shetler, Carl F. Oestermeyer, E. Schwartz.

The Fairfield Hotel Co., Millersport, \$5,000. W. H. Swartz, L. B. Swartz, L. S. Welsh, F. Millay, A. I. Millay.

The F. N. Building Co., Bellaire, \$400,000. C. W. Dickens, J. F. Mel-lott, Jno. H. McGraw, Bert W. Hop-kins, A. V. Noice.

The Dixie Products Co., Cincinnati, \$100,000. William Leibel, John A. Brinkley, Carl A. Schall, Charlton C. Wright, William C. Groh.

The Oakdale Lumber Co., Van Buren Township, R. F. D. 2, Dayton, \$25,000. Clinton W. Flowers, Olive C. Flowers, George D. Driscoll, Mae B. Watson, Thelma Flowers.

The Springfield Mfg. Co., Spring-field, \$25,000. James F. Kennedy, Gustav A. Bauer, John J. Shea, Joseph F. Kennedy, Rollie E. Black.

The Akron Informer Pub. Co., Akron \$5,000. Amos H. Foreman, Claudea Coleman, A. Lavaine Bolar, Thos. E. Greene, Jr., Dr. John W. Dunbar.

The American Body Co., Cleveland, \$200,000. Chester A. Humel, John P. Kalina, Ella M. Stevenson, Francis Harris, A. F. Humel.

The Electro Carbonic Co., Cleve-land, \$41,000. W. H. Abbott, Geo. F. Woelfel, D. L. Coy, H. B. Pearce, Irma N. Roswurm.

The Cleveland Refractories Co., Cleveland, \$10,000. S. Q. Kerruish, Herbert A. Quayle, Geo. W. Spooner, L. A. Craft, B. E. Pacovsky.

The H. Ramerman Contracting Co., Rocky River, \$20,000. Harry Ram-erman, Wm. P. Tomilty, Lee Bert Policy, M. W. Berkeley, W. G. Daniels.

The Cincinnati Radio Equipment Co., Cincinnati, \$50,000. B. H. Linne-man, E. E. Havers, John R. Linne-mann, E. A. Carley, G. L. Havers.

The Saint Clair Jewelry and Music Co., Cleveland, \$5,000. John Metelko, Louis Smith, Geo. Berger, Frank Hudoklin, Leopold Springer.

The K-B Lite Co., Cleveland, \$5,000. Max Barcus, Sam Klein, Esther Bar-cus, Sam Emchick, Joseph H. Mellen, Elsie A. Manns.

The Heights Temple Annex Co., Cleveland, \$150,000. Fred C. Becker, C. Ralph Kein, Maurice J. Reigert, Fred Hale Vase, Ernest A. Feazel.

The Euclid-Willev Co., Cleveland, \$10,000. Edw. C. Daoust. Trafton M. Dye, Quay H. Findley, C. A. Alexan-der. N. J. Horsburgh.

The Windhorst Realty Co., Cincin-nati, \$20,000. Ralph Henry Wind-horst, Max W. Schiff, Clifford Brown, K. S. Morrison, A. C. Shattuck.

The Egert Abstract Co., Canton, \$10,000. Geo. B. Eggert, Myrtle E. Waleski, William Jacob, F. P. Schick-er, A. H. Elliott.

The Broadway Fashion Shop Co., Akron, \$10,000. Samuel Friedman, H. B. Harris, E. V. Maguire, Fred M. Denison, Pauline Johnston.

The David Selker Co., Cleveland, \$10,000. David Selker, Albert N. La-France, S. Q. Kerruish, W. S. Ker-ruish, Herbert A. Quayle.

The J. L. Brazee Co., Cleveland, \$10,000. Jas. L. Brazee, M. S. Farmer Jr., Grace Davis, Louis Covell, R. H. Morgan.

The Klein Vinegar and Specialty Co., Cleveland, H. S. Gottfried, E. J. Hopple, J. S. Silber, C. Gottfried, J. Jay Nessy. (\$20,000.00).

The Idora Dodgem Co., Youngs-town, \$12,000. Clyde W. Osborne, Alex. Crow, J. T. McKown, Helen Petty, Sara Petty.

The H. W. Jenkins Coal and Coke Co., Columbus, \$25,000. H. W. Jen-kins, J. A. Jenkins, Clara L. Jenkins, Rachel A. Jenkins, Frank B. Collins.

The Sharkey Systems Co., Dayton, \$50,000. James Sharkey, Wynn Hoerner, T. H. Reiber, C. J. Geyer, Chas. Frech.

The Joseph J. Sayre & Son Co., Cincinnati, \$15,000. Charles K. Sayre, Alexander P. Griesmann, Sigmond Firetsch, William A. Bauman, Juli-ana Rothan.

The Hiner Rock Asphalt Co., Lima, \$500,000. E. W. Hiner, A. L. Methe-any, Chas. Killen, A. J. Brown, D. K. Kirwan.

The Cadillac Bus Co., Girard, \$50,-000. C. C. Gehr. E. W. George, Ruby H. George, Mabel I. Gehr, Gay-lord Richardson.

The Kirschner Tire & Supply Co., Cincinnati, \$10,000. Abe Silverstein, Bessie Fletcher, Hilda Kirschner, William C. Groh, John W. Cowell.

The Washington Rubber Co., Akron, \$20,000. Thomas P. Tyrrell, Mary May Tyrrell, Frederick Suhr, Celia Suhr, Gertrude Masino.

The Lincoln Press Co., Dayton, \$10,000. William S. Crandall, Clara Hoffman, Crandall, Wm. A. Swaney, Robert F. Klepinger.

Increase

The Land Grant Bond & Mortg. Co., Dayton, from 100 to 10,000 shares no par value.

PUBLIC UTILITIES COMMISSION

Advanced Utility Rate Proceeding No. 83—In the Matter of the Proposed Increased Rates and Charges of The Celina Gas Company for Natural Gas Service, Filed to Become Effective March 1, 1922.

(Dated May 26, 1922.)

The village of Celina, Ohio, having this day by its solicitor acting upon the direction of the council of said village, withdrawn its protest against the going into effect of the schedule of rates and charges heretofore suspended herein and the respondent, The Celina Gas Company, by the filing of an undertaking herein having charged the increased rates carried in its said schedule from the date on which said schedule was published to become effective, it is

Ordered, That the order heretofore made and entered herein suspending the going into effect on the first day of March, 1922, of The Celina Gas Company's schedule designated P. U. C. O. No. 7 providing rates and charges for natural gas service at Celina, Ohio, be, and hereby it is vacated and that this proceeding be, and hereby it is discontinued.

ATTORNEY GENERAL

Shares of Stock in a Corporation Organized for the Purpose of Dealing in Bonds, Stocks and Other Evidences of Indebtedness, and Which is Actually Engaged in the Conduct of Such Business, are Subject to Taxation by the Same Method as That Applied to the Shares of Stock of State and National Banks, Namely, That Provided for by Sections 5408, et seq, General Code; and, Conversely, the Property of Such Companies (Excepting the Real Estate, See Section 5409, G. C.) is Not Subject to Taxation Under the General Property Tax Laws of the State.

No. 3128—(Opinion Dated May 23, 1922.)

Tax Commission of Ohio, Columbus, Ohio.

Gentlemen: The commission recently submitted to this department a letter from Messrs. Tolles, Hogsett, Ginn & Morley, calling attention to the nature of the business done and authorized to be done by The Tillotson & Wolcott Company, a corporation, and asserting the claim that this company should by reason of the facts mentioned therein be considered a "bank," or "banker," within the meaning of Section 5407 of the General Code. The commission requested the opinion of this department on the question thus raised.

Section 5407 of the General Code provides as follows:

"A company, association, or person, not incorporated under a law of this state or of the United States, for banking purposes, who keeps an office or other place of business, and engages in the business of lending money, receiving money on deposit, buying and selling bullion, bills of exchange, notes, bonds, stocks, or other evidences of indebtedness, with a view to profit, is a bank, or banker, within the meaning of this chapter."

The facts shown by the letter, and otherwise, are as follows:

The articles of incorporation of the company declare that it is formed for the purpose of "the business of purchasing and selling bonds, mortgages and other securities." The letter (which has been subsequently supplemented by another letter submitting more detailed information) shows that the entire capital of this company is invested in the business described in the articles of incorporation. That is to say, the company invests its capital

in the purchase of securities of the kinds mentioned, receiving the income therefrom during the period of its ownership, and disposing of them for profit. Such business is in sense essentially mercantile, in that the element of buying and selling for profit is prominently present in it; but it is distinguishable from an ordinary mercantile business, in that the things sold are productive of income while held.

Unquestionably, the business described is one of the usual activities of a bank. It is one of the kinds of business expressly referred to in Section 5407. It is conducted by the company in question as its sole and exclusive business pursuit, a statement which serves to distinguish the present case at once from the opinion of a former attorney general referred to in the correspondence, and found in the report of this department for the year 1911-12, Vol. 1, page 662, for in that opinion the attorney general was dealing with the case of a department store which purely in an incidental way was wont to receive money on deposit for the accommodation of its customers and the extension of its general mercantile business. Regardless of the reasons assigned by the former attorney general for the conclusion reached by him, it is clear that the department store, or the individuals or corporation conducting it, could not be regarded as a bank within the meaning of Section 5407, because the capital invested in the business generally was embarked upon a mercantile enterprise, to which the receipt of money on deposit was purely incidental. The capital invested in the enterprise of receiving money on deposit could not be separated from that invested in the general business, and for aught that appears, there was no investment of capital otherwise than in a stock in trade of merchandise, and the building and fixtures necessary to conduct the store. In the instant case, however, there is no such alien investment of capital, but the entire capital of the company is embarked in the enterprise of dealing with securities.

It is the opinion of this department, therefore, that the former opinion is not decisive of the present question, which accordingly may be very simply stated as a legal problem in the following terms:

Assuming that the company, association or person which invests its or his capital principally in an entirely unrelated business or enterprise, and as a mere incident thereto, buys and sells securities or receives money on deposit, is not a bank, is such a company, association or person which engages in the business of doing one or more of the things enumerated in Section 5407, but not all of

them, and invests all of its or his capital in such business, or makes a distinct separation of that investment and that business from any other investments and businesses conducted by it or him, a "bank," or "banker," within the meaning of said section.

In short, it is necessary that a company, association or person should engage in a business which comprehends the doing of all of the things mentioned in Section 5407 of the General Code in order to qualify as a "bank," or "banker," within the meaning of that section?

The former attorney general intimated with some doubt an affirmative opinion on this question in disposing of the case above described. For reasons above suggested, this department does not feel bound by this expression of opinion, because it is possible to dispose of the former case on another ground. Accordingly, the question as stated will be considered without reference to the former opinion.

Before entering upon a consideration of Section 5407, it may be proper to remark that for several reasons this section is to be construed without regard to other statutory definitions of the same term. We have, for example, a definition of a bank in Section 710-2 of the General Code, which is as follows:

"The term 'bank' shall include any person, firm, association, or corporation soliciting, receiving or accepting money, or its equivalent, on deposit as a business, whether such deposit is made subject to check or is evidenced by a certificate of deposit, a pass-book, a note, a receipt, or other writing, and unless the context otherwise requires as used in this act includes commercial banks, savings banks, trust companies and unincorporated banks; provided that nothing herein shall apply to or include money left with an agent pending investment in real estate or securities for or on account of his principal; nor to building and loan associations or title guarantee and trust companies incorporated under the laws of this state. All banks, including the trust department of any bank, organized and existing under laws of the United States, shall be subject to inspection, examination and regulation as provided by law."

This definition, it will be observed, makes the receipt of money on deposit the sole test. It is followed by other sections which make it an offense to use the word "bank" as a part of the designation of a business name, unless the user is engaged in receiving money on deposit. This section would prevent a company of the kind inquired about from using the phrase "investment bankers"

as a part of any descriptive title employed by them, although in the correspondence they are referred to by that term.

However, these sections just referred to are part of an act providing for the regulation and supervision of banks which, as a whole, exhibits a consistent purpose to protect the depositors of money. It is, therefore, a definition for a particular purpose, and is in no wise to be confounded with the definition under examination at the present time. Another definition of the term "bank" is found in Section 8295 of the General Code as follows:

"'Bank' includes any person or association of persons carrying on the business of banking whether incorporated or not."

This definition is incomplete, in that it does not describe "the business of banking." That is evidently left to the common law. There have been many common law definitions of the word "bank," and it must be admitted that the receipt of money payable on demand constitutes an important element in all of them.

Numerous definitions of the word "bank," or "banker" might be quoted, but they would unnecessarily burden this opinion. Those available will be found to make the concession stated in 3 R. C. L., page 375, in the following terms:

"Strictly speaking, the term 'bank' implies a place for the deposit of money as the most obvious purpose of such an institution."

It is stated, however, in the same context that statutes for one purpose or another frequently use the term in an enlarged or restricted sense, and there are dicta of great weight describing the issuance of notes for circulation as the essential characteristic of a banking business. See *Augusta v. Earl*, 13 Peters, 564. This also is the sense in which the phrase "associations with banking powers" is used in Section 7, Article XIII of the Constitution of Ohio. *Dearborn v. Northwestern Savings Bank*, 42 D. S., 617.

But it is believed that it would not be profitable to pursue further the question as to what the term "bank" or "banker" means in its natural unqualified sense, or in any other statute; for, as stated, we are dealing here with a legislative definition of the term, and in the very nature of the case that definition would not have been framed had the legislature intended to leave the subject to the common law, or to other statutory definitions.

The letter of counsel suggests that doubt as to the meaning of the section must be resolved by taking into consideration the

most probable legislative intent underlying the whole act of which it is a part.

This intent, counsel say, must have been to conform the tax legislation of Ohio to the requirement of Section 5219 of the Revised Statutes of the United States. This section, which is a part of the national banking act, extends to the states permission to tax the shares of stock of national banks. In granting such permission, however, congress has attached a condition to the effect that such state taxation "shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such states."

Of course, in Ohio the rate of property taxation under the present constitution must needs be uniform (Article XII, Section 2), so that literally it would be impossible on state constitutional grounds for the Ohio legislature to tax national bank stock at a higher rate than other moneyed capital in the hands of individual citizens. But numerous decisions of the Supreme Court of the United States have made it clear that the scope of the condition embodied in Section 5219 of the Revised Statutes of the United States is not limited to nominal discrimination in rate but goes to the extent of prohibiting actual discrimination through different methods of assessment, the allowance of set-offs and the like. Thus in *Evansville Bank v. Britton*, 105 U. S., 322, it was held that Indiana could not permit the individual taxpayer to deduct his bona fide debts from rights, credits, demands for money and interest generally, in whatever form, without permitting a like deduction to be made from the assessed values of shares of stock in a national bank; and in our own state the application of different standards of value to assessment of national bank stock and to that of other moneyed capital has been held to be a discrimination forbidden by that section.

Pelton v. Bank, 101 U. S., 143;

Cummings v. Bank, 101 U. S., 153;

also the tax imposed upon the capital, etc., of state banks from the assessment of which the value of United States bonds was permitted to be deducted, was held to be an invidious discrimination by our Supreme Court in *Frazer v. Seibern*, 16 O. S., 614.

It is therefore argued that the motive of the general assembly in framing the statutory definition under examination was to insure that the same method of assessment would be applied to all invested capital that might be within the scope of the comparison required

to be made by Section 5219 of the Revised Statutes of the United States, so that the Ohio tax on shares of stock of national banks could not be attacked as discriminatory under that section.

With this object in view it is further argued that the legislature framed this definition intending thereby to contemplate all business that might come into competition with any of the recognized branches of the business of a national bank. Hence, it is argued that the statute should be read distributively rather than cumulatively.

In the opinion of this department this argument is sound. To be sure, it emanates from a source from which no complaint under the federal statute could arise; for other moneyed capital is not entitled to any protection under Section 5219 of the Revised Statutes of the United States, and cannot object to being taxed at a higher rate than shares of stock in a national bank. The protection accorded by that section is limited to the national bank stock. This point is, however, beside the mark, for if to avoid the possibility of discrimination against national bank shares the legislature has enacted a statute to the general effect that competing capital shall be taxed in the same way as national bank shares, then the owners of such competing capital are entitled to whatever benefit may accrue to them from that section. Academically, it would seem that the burdens of such taxation would be quite likely in a given case to outweigh any benefits; for to take the case in hand as an example, if the company in question should at a given time have a very large part of its capital invested in United States bonds, such investment would be exempt from taxation under the general property tax; but if the construction contended for is correct, the fact that the capital was invested in United States bonds would be immaterial, as the thing taxed would not be the bonds themselves, but the capital invested in them represented by shares or otherwise, as in the case of national banks themselves. For some practical reason that is not expressed, however, this particular company, through its counsel, seems to believe that it would be advantageous to it to have the method employed in taxing shares of stock of a national bank applied to the taxation of its shares, and the question thus raised cannot be avoided by pointing out that under a possible combination of circumstances the application of such a method in lieu of that which would otherwise be applied would for reasons stated, and others which have not been mentioned, be disadvantageous from its point of view. The correctness of the argument which has been con-

sidered seems to be suggested strongly by the recent decision of the Supreme Court of the United States in *Merchants National Bank of Richmond v. Richmond*, 256 U. S., 635. In that case there was drawn in question the validity of certain Virginia statutes and ordinances of the City of Richmond which, taken together, authorized the imposition of taxes on bank stocks, state and national at a total rate of one dollar and seventy-five cents on the hundred dollar valuation, while the aggregate rate on intangible personal property in general, including bonds, notes and other evidences of indebtedness, was ninety-five cents on each hundred dollars of valuation. Such a discrimination against the national banks was upheld by the state court on the ground that the purpose of Section 5219 Revised Statutes was confined "to the prevention of discrimination * * * in favor of state banking associations against national banking associations, and that since none such is shown here there was no repugnance to the federal statutes." The Supreme Court, however, following the earlier decisions, some of which have been cited, held this to be too narrow a view of Section 5219. The following is quoted from the opinion of the court by Mr. Justice Pitney at page 639:

"By repeated decisions of this court, * * * it has become established that though 'moneyed capital in the hands of individual citizens' do not include shares of stock in corporations that do not enter into competition with the national banks, they do include something besides shares in banking corporations and others that enter into direct competition with those banks. They include not only moneys invested in private banking, properly so-called, but investments of individuals in securities that represent money at interest and other evidences of indebtedness such as normally enter into the business of banking."

Further in the opinion, quoting from *Mercantile Bank v. New York*, 121 U. S., 138, Mr. Justice Pitney gave approval to the following:

"The terms of the act of congress, therefore, include shares of stock or other interests owned by individuals in all enterprises in which the capital employed in carrying on its business is money, where the object of the business is the making of profit by its use as money. The moneyed capital thus employed is invested for that purpose in securities by way of loan, discount, or otherwise, which are from time to time, according to the rules of the business, reduced again to money and reinvested." (Page 640.)

These principles serve very clearly to show that the money

invested in the business of the Tillotson & Wolcott Company by way of contributions to its capital stock is "other moneyed capital in the hands of individual citizens" within the meaning of Section 5219 of the Revised States of the United States, for the capital so invested is on the facts stated, invested in securities with a view to the sale thereof and the reinvestment of the capital in other securities, thus being employed in precisely the manner described in the quotation from *Mercantile Bank v. New York*, *supra*.

These things being true, it would follow that even if we had in Ohio no such statute as Section 5407 of the General Code, an attempt by this state to tax an incorporated so-called "investment banker" under the general property tax law, allowing it an exemption in respect of United States bonds in which its capital might be invested, for example, and a deduction of its debts from its credits, could be successfully objected to by the national banks, unless the same privileges were accorded to them—and they are not so accorded; see Sections 5408 and 5412, inclusive, General Code. These things being true, it is the opinion of this department that Section 5407 is to be read in the light of the surrounding circumstances as an effort on the part of the legislature to avoid such a consequence. Being such an effort, it is to be construed consistently with that intent. Such a construction produces the result contended for by counsel, namely, that a company, association or person not incorporated under a law of this state or of the United States for banking purposes who does any one of the things enumerated in Section 5407 as the principal object for which his or its capital is invested, is within the scope of the definition therein embodied. This statute so construed then becomes a law of this state, the protection and benefits of which, if any, such a person or corporation is entitled to claim.

This department is aware of the fact that the above conclusion is in a sense revolutionary. Doubtless, the contrary interpretation of the section has the sanction of long usage. This, however, is easily explained, for as above pointed out, it may have been thought, and doubtless was thought on the part of "investment bankers" and others similarly situated that it was to their advantage to be taxed under the general property tax laws; whereas, it was not until the recent decision in the *Richmond* case, *supra*, that it became clear that national banks could object to a discrimination in favor of institutions other than state banks. While these speculations do not explain the inactivity of the taxing

officials, they tend to account for the long acquiescence of others in what is now believed to be an erroneous interpretation of that section.

However, that may be, it is the opinion of this department, for the reasons above stated, that the shares of stock in a corporation organized for the purpose of dealing in bonds, stocks and other evidences of indebtedness, and which is actually engaged in the conduct of such business, are subject to taxation by the same method as that applied to the shares of stock of state and national banks, namely, that provided for by Section 5408 et seq. of the General Code; and, conversely, that the property of such companies (excepting the real estate; see Section 5409, G. C.), is not subject to taxation under the general property tax laws of the state.

38

Proceedings to Foreclose the Lien for Taxes Against Lands Certified as Delinquent, Brought Under Section 5718 of the General Code, Must be Separate in the Case of Each Parcel Certified as Delinquent.—In Proceedings to Foreclose the Lien of the State for Taxes, Brought Under Sections 2670 and 2671 of the General Code, Different Parcels, etc. May be Joined in One Action; but the Decree in Such Cases Must be Rendered Separately. Such Proceedings May be Brought in the Case of Lands Forfeited to the State for Non-Payment of Taxes.

No. 3069—(Opinion Dated May 8, 1922.)

Hon. Harry Britton, Prosecuting Attorney, Batavia, Ohio.

Dear Sir: You recently submitted to this department the following question:

"In Steele's Subdivision of Branch Hill lots, Miami township, Clermont county, Ohio, there are 39 lots delinquent for taxes, about half of these lots have been forfeited to the State of Ohio, and the rest were certified in 1918 for delinquency.

Taxes have not been paid on these lots for several years and the auditor has a party who will buy them if sold at tax sale, and will, of course, thereafter pay the taxes.

The lots that have been certified can be sold under Sections 5718 and 5719.

What I desire to know is, can I bring a suit against the owners of the lots that have been certified and sell the lots for taxes, and in the same suit, but, in a second cause of action, can I bring suit to sell the lots that have been forfeited to the state? In other words, is it possible to bring a suit to sell certified lands and forfeited lands in the same action.

I would like to know further if it is necessary under Sections 5718 and 5719 to bring one action to sell all certified lands in Clermont county, or just to sell certain ones we feel will sell."

You refer to Sections 5718 and 5719 of the General Code. These sections provide in part as follows:

"Sec. 5718. It shall be the duty of the county auditor to file with the auditor of state, a certificate of each delinquent tract of land, city or town lot, at the expiration of four years, upon which the taxes, assessments, penalties and interest have not been paid for four consecutive years, and a certified copy thereof shall at the same time be delivered to the county treasurer; and it shall be the duty of the auditor of state to cause foreclosure proceedings to be brought in the name of the county treasurer, upon each unredeemed delinquent land tax certificate; * * * it shall be sufficient, having made proper parties to the suit, for the treasurer to allege in his petition that the certificate has been duly filed by the county auditor; that the amount of money appearing to be due and unpaid, thereby is due and unpaid and a lien against the property therein described, and the prayer of the petition shall be, that the court make an order that said property be sold by the sheriff of the county in the manner provided by law for the sale of real estate on execution. * * * The certified copy of said delinquent land tax certificate, filed with the county treasurer, as hereinbefore provided, shall be prima facie evidence on the trial of the action, of the amount and validity of the taxes, assessments, penalties and interest appearing due and unpaid thereon, plus the amount of eighty-five cents due from the defendants for the delinquency of each year, for advertising and issuance of certificates, and of the non-payment thereof, without setting forth in his petition any other or further special matter relating thereto."

"Sec. 5719. Judgment shall be rendered for such taxes and assessments, or any part thereof, as are found due and unpaid, and for penalty, interest and costs, for the payment of which, the court shall order such premises to be sold without appraisalment. From the proceeds of the sale the costs shall be first paid, next the judgment for taxes, assessments, penalties and interest and the balance shall be distributed according to law. The owner or owners of such property shall not be entitled to any exemption against such judgment, nor shall any statute of limitations apply to such action. * * *"

One question which arises is as to whether these sections contemplate or authorize a single action, or require a separate action for "each delinquent tract of land, city or town lot." The answer to this question will really dispose of both of the questions you submit,

although it will be necessary to refer to certain other sections dealing with foreclosure of the state's lien for taxes upon forfeited lands before the question is entirely disposed of.

In order to get at the exact meaning of Sections 5718 and 5719, other sections in *pari materia* may be examined. Section 5712 of the General Code provides for the making up of what is called a delinquent land tax certificate. This document is made up after the lands which become delinquent in any year are ascertained, and have been advertised as delinquent. This certificate is by the express provisions of Section 5712 of the General Code to be a single document containing a list of all of the lands so becoming delinquent. The following may be quoted from that section:

"Sec. 5712. * * * Said county auditor or his deputy, shall continue from day to day with the making of said certificate until one complete certificate is made for each and all of said tracts of land, city or town lots or parts of lots contained in such advertisement, and upon which said taxes and assessments have not been paid. The original of said certificate of all the tracts of land, city or town lots or parts of lots, shall be forwarded to the auditor of state, the duplicate and triplicate thereof to be kept, one in the county treasurer's office and one in the county auditor's office, bound in book form. * * *"

Section 5713 of the General Code provides as follows:

"The state shall have a first and best lien on the premises described in said certification, for the amount of taxes, assessments and penalty, together with interest thereon at the rate of eight percent per annum, from the date of delinquency to the date of redemption thereof, and the additional charge of twenty-five cents for the making of said certification, and sixty cents for advertising. If the taxes have not been paid for four consecutive years, the state shall have the right to institute foreclosure proceedings thereon, in the same manner as is now or hereafter may be provided by law, for foreclosure of mortgages on land in this state, and there shall be taxed by the court as costs in the foreclosure proceedings instituted on said certification, the cost of an abstract or certificate of title to the property described in said certification, if the same be required by the court, to be paid into the general fund of the county treasurer."

Here is the first reference to the foreclosure proceedings dealt with in Section 5718 of the General Code. It will be observed that Section 5713 refers to them as the "foreclosure proceedings instituted on said certification." If then the certification is a unit and the foreclosure proceedings are to be instituted "on the certification," it would seem that the lien to be foreclosed is one that is

established as a unit and might be regarded as analogous to a blanket mortgage covering several parcels of land. This would be a strange result, however, for the practical consequence would be that the taxes on one parcel which might fail to sell could be discharged by the successful sale of one or more other parcels included in the same certification.

Yet this idea runs on through the sections. Section 5716 of the General Code provides as follows:

"Within five days after the second Tuesday of February each year, the county auditor shall deliver to the auditor of state, a list showing the certification so made by him, and the names in which the lands described in the certification stood upon the tax duplicate. Two copies of such list shall be kept posted for a period of two years, for public inspection, in a prominent place in the office of the county auditor."

Then comes Section 5718 which has already been quoted. Observe that it requires that the county auditor file with the auditor of state a certificate of each delinquent tract, etc. upon which the taxes, etc. have not been paid for four consecutive years. This certificate is not expressly authorized or required to include all the lands in this situation; that is to say, it would seem that a separate certificate would have to be filed with the auditor of state for each tract, etc. Yet when the section goes on to provide for the foreclosure proceedings, it stipulates that these shall be brought "upon each unredeemed delinquent land tax certificate," and inasmuch as the phrase "delinquent land tax certificate" is given a meaning in Section 5712, and that meaning, as heretofore stated, imports a single document on which all delinquent lands are listed, it is again arguable that the foreclosure proceedings under Section 5718 shall consist of a single action against all the lands originally included in the certificate.

Here again, however, a troublesome question arises. What is meant by the word "unredeemed" modifying the phrase "delinquent land tax certificate?" The implication is that the delinquency as a whole has been redeemed. Yet if the certificate is to include all of the delinquent lands, it is hard to imagine a case in which there might be a redemption of all delinquencies.

The meaning of the word "redeemed" is, however, disclosed by Section 5723, which reads as follows:

"It shall be the duty of the county treasurer, upon receipt by him of all moneys due him for delinquent taxes, assessments, penalty and interest on any tract of land, city or town lot, to enter upon the tax duplicate the word 'redeemed,'

and it shall be the duty of the county auditor, after each settlement period, to revise the record of certified delinquent lands, city or town lots, by writing the word 'redeemed' (in the margin provided for that purpose) on all such tracts of land, city or town lots entered 'redeemed' upon the treasurer's duplicate."

This shows that the redemption applies only to the tract on which the taxes, etc. are paid. Section 5724 provides further in this connection as follows:

"All delinquent land upon which the taxes, assessments, penalty or interest have become delinquent, may be redeemed at any time before foreclosure proceedings thereon have been instituted, by tendering to the county treasurer the amount then due and unpaid."

With Section 5723, this section further disclosed the meaning of the word "redeemed."

Now, we have Section 5720 which provides as follows:

"No issuance of a delinquent land tax certificate shall be invalid on account of its having been charged on the duplicate in name other than that of the rightful owner, if in other respects it is sufficiently described on the duplicate, and the taxes, assessments, penalty and interest set forth in said certificate were due and unpaid at that time."

This section obviously imports the existence of a separate delinquent land tax certificate for each tract or lot. From these conflicting and somewhat obscure provisions it is difficult to draw any definite conclusion. However, a comparison at this point with Sections 2670 and 2671 of the General Code may be helpful. These sections are part of a group authorizing an action by the county treasurer to foreclose the state's general lien for taxes on real estate. They provide as follows:

"Sec. 2670. Judgment shall be rendered for such taxes and assessments, or any part thereof, as are found due and unpaid, and for penalty and costs, for the payment of which the court shall order such premises to be sold without appraisal. From the proceeds of the sale the costs shall be first paid, next the judgment for taxes and assessments, and the balance shall be distributed according to law. The owner or owners of such property shall not be entitled to any exemption against such judgment, nor shall any statute of limitations apply to such action. When the lands or lots stand charged on the tax duplicate as forfeited to the state, it shall not be necessary to make the state a party, but it shall be deemed a party through and represented by the county treasurer."

"Sec. 2671. In such proceedings the county treasurer

may join in one action all or any number of lots or lands, but the decree shall be rendered severally or separately, and any proceedings may be severed in the discretion of the court for the purpose of trial, error or appeal, where an appeal is allowed, and the court shall make such order for the payment of costs as shall be deemed equitable and proper."

Here is express provision for the rendition of a separate or several decree in a case where several lots or lands are authorized to be joined in one action to foreclosure. The absence of such a provision in Section 5719 is significant. Under Section 5719 but a single judgment is to be rendered. The practical difficulties in the way of construing Sections 5718 and 5719 as authorizing a joinder of the proceedings to foreclose the lien on distinct parcels of land, though included in the same delinquent tax certificate, are great. Indeed, a constitutional point may be involved. At any rate, in the absence of language like that found in Section 5721, this department is of the opinion that in spite of the language in Sections 5712 and 5718, which has been quoted, the true meaning of these sections is that a separate action must be brought against each parcel of land certified as delinquent.

This statement answers both of your questions. The quotation of Sections 2670 and 2671 of the General Code shows that it is possible to proceed against all forfeited lands in a single action, but in the opinion of this department, this cannot be done under Sections 5718 and 5719 of the General Code.

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**Sections 7248-2 General Code, Limits the Height of Vehicles Only
and Does not Limit the Height of Vehicle and Load Combined.**

No. 3102—(Opinion Dated May 16, 1922.)

Department of Highways and Public Works, Division of Highways, Columbus, Ohio.

Gentlemen: You have requested the views of this department in connection with a communication recently submitted to your department, the substance of which is as follows:

A certain company operates trucks in the conduct of its business and loads these trucks in such way that the top of the load is more than twelve feet six inches from the ground. The company calls attention to the provisions of section 7248-2 G. C., and expresses doubt whether the terms of that section in specifying height refer to both vehicle and load, as distinguished from vehicle alone; but they add that if their

doubts are not well founded they desire from you written permission to operate their trucks with loads having a greater height than twelve feet six inches. They say that their trucks are of a less height than twelve feet six inches.

Section 7248-2 G. C. reads as follows:

"No vehicle shall be operated upon the highways of this state whose width, is greater than ninety-six inches, except traction engines whose width shall not exceed one hundred and thirty-two inches, and no vehicle shall be operated on the highways of a greater height than twelve feet six inches, or of a greater length than thirty feet, and no combination of vehicles coupled together shall be so operated whose total length, including load, shall be greater than eighty-five feet, provided that in special cases vehicles whose dimensions exceed the foregoing may operate under a written permit granted as provided in this chapter. Provided that this section shall not apply to fire engines, fire trucks, or other vehicles or apparatus belonging to any municipal volunteer fire department or salvage company organized under the laws of Ohio or used by such department or company in the discharge of its functions."

The section was originally enacted as part of the so-called Burke Truck Law, 109 O. L., 546, regulating the use of motor vehicles upon highways, etc.

Section 7246, as amended in that act, makes provision for maximum weight, and specifies the weight as including "weight of vehicle, object or contrivance and load". Section 7247 G. C., which was not amended by the Burke Bill, but which is part of the series of sections which were so amended, also uses the words "including weight of vehicle, object or contrivance, structure and load" in making provision for permits in special cases. Likewise, sections 7248, as amended by the Burke Bill, and 7248-1, as originally enacted in the Burke Bill, both include load in making provision for width of tires and distribution of weights; and again, section 7249, as amended by the Burke Bill, uses the words "combined weight of vehicle and load" in prescribing certain speed limits.

With these facts in mind, the conclusion is inevitable that section 7248-2 cannot be so read as to include load in measuring height. It is quite true that there is not much logical relationship between prescribing maximum height on the one hand, and maximum weight on the other; but at the same time the General Assembly in passing the Burke Bill was practically revising the

whole subject of the use of commercial vehicles upon public highways, so that had there been an intention to limit the height of both vehicle and load, the legislature could readily have said so, as it did in the case of weights. Moreover, the Burke Bill, while regulatory in character and hence not perhaps subject to the same strict construction in favor of an accused as the courts give criminal statutes, nevertheless provides rather drastic penalties for a violation of its terms; so that the terms of the act are certainly not to be extended beyond their fair import. At all events, whatever may have been the intent of the legislature, it has used language in section 7248-2 going only to the extent of limiting the height of vehicles, and has not made provision in said section 7248-2 or elsewhere for a limitation upon the height of vehicle and load combined.

The conclusion stated makes unnecessary a discussion of the question whether you are authorized to grant permits in special cases where it is desired to operate a vehicle when the combined height of vehicle and load is in excess of twelve feet six inches.

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**The County Commissioners Are Authorized to Purchase Weighing
Jacks for the Use of Deputy Sheriffs in Weighing Trucks in
Order to Ascertain That Said Trucks are not Overloaded.**

No. 3112—(Opinion Dated May 18, 1922.)

Hon. Lawrence H. Webber, Prosecuting Attorney, Elyria, Ohio.

Dear Sir: You inquire whether your county commissioners have authority to purchase weighing jacks for use by deputy sheriffs in weighing trucks upon the road to see that they are not overloaded.

Your inquiry is somewhat more broadly stated than is necessary to a solution of the point involved; since the authority in question does not, for reasons hereinafter pointed out, turn on the question whether the jacks are to be used "on the road." If they may be purchased at all, the purchase might just as well be for use at one central point, such as the court house grounds; and your inquiry will accordingly be answered upon this narrower basis.

Your inquiry has its origin in the amendment to sections 7246 et seq. as made by an act found in 109 O. L., page 546. That act, after prescribing maximum weights for vehicles and loads upon the public highways, makes further provision that

"the sheriff of any county is hereby authorized to detail one or more deputies for the special work of enforcing the provisions of this act for such periods of time and in such manner as he shall deem necessary."

The answer to the question is to be found not in any specific provision for the purchase of weighing jacks, but in the provisions of sections 2419 G. C. found in the chapter relating to county commissioners and reading as follows:

"A court house, jail, public comfort station, offices for county officers and an infirmary shall be provided by the commissioners when in their judgment they or any of them are needed. Such buildings and offices shall be of such style, dimensions and expense as the commissioners determine. They shall also provide all the equipment, stationery and postage, as the county commissioners may deem necessary for the proper and convenient conduct of such offices, and such facilities as will result in expeditious and economical administration of the said county offices. They shall provide all room, fire and burglar-proof vaults and safes and other means of security in the office of the county treasurer, necessary for the protection of public moneys and property therein."

The powers thus conferred are believed to include authority in the county commissioners to make the purchase in question if in their discretion they desire to do so.

The conclusion just stated has not been arrived at in the absence of consideration of two previous opinions of this department, the first appearing in Opinions of Attorney General, 1918, Vol. 1, p. 786; and the second in 1920 Opinions, Vol. II, p. 977. In the latter opinion the view was expressed that prosecuting attorneys might under the provisions of section 3004 G. C. purchase scales or other weighing devices whenever such purchase might be found reasonably necessary to the procuring of evidence against persons violating the traffic laws of the state. That view was predicated among other things upon the theory, as stated in the course of the opinion, that the purchase of scales or other weighing devices for the purpose in question was not "otherwise provided for",—that is to say, not provided for otherwise than in section 3004 G. C. It is quite true that at the time of the rendition of said opinion, section 2419 was in force in the form above quoted, though that section is not mentioned specifically in the course of the opinion. It is important to note, however, that since the rendition of said opinion, the amendment to sections 7446 et

seq. have gone into effect, providing among other things in the above quoted language that the sheriff is especially charged with the duty of enforcing the provisions of said sections 7246 et seq. The language above quoted from said amendments does not contemplate a mere passive course on the part of the sheriff, but on the contrary, charges that officer with the duty of actively proceeding with the enforcement of the provisions of said amendments. With this in mind, it becomes plain that the underscored portion of section 2419, especially in the use of the word "facilities" is ample in scope to confer the authority now in question. It may not fairly be said that the word "facilities" is to be limited in its application to mere office equipment as ordinarily understood, for we find the word "facilities" used in connection with the words "expeditious * * * administration" of the county offices; and certainly expeditious administration of the sheriff's office includes the prompt handling of traffic violations, not only as concerns the general public, but also the accused. As to the first of the two previous opinions above cited, it is to be said that the underscored language of section 2419 has been inserted in that statute by amendment since the rendition of said opinion.

* *

The Widower of a Daughter of a Decedent, is not Comprised Within the Third Class Created by Section 5334, General Code, Under the Designation of "Husband of a Daughter" and is Not a Successor Entitled to Any Exemption Under the Inheritance Tax Law.

No. 3113—(Opinion Dated May 18, 1922.)

Tax Commission of Ohio, Columbus, Ohio.

Gentlemen: The commission has recently requested the opinion of this department upon the following question:

"Do the words 'husband of a daughter' as used in Paragraph 3 of Section 5334 comprise 'widower of a daughter'? In other words, is the widower of a deceased daughter entitled to an exemption of \$500.00 and a rate of 5 percent on a succession passing to him under the inheritance tax laws?"

The phraseology of the inheritance tax law on the point is as follows:

"Sec. 5334. * * * * *

3. When the property passes to or for the use of * * * the wife or widow of a son, the husband of a daughter of the decedent, * * * the exemption shall be five hundred dollars."

"Sec. 5335. The rates at which such tax is levied are as follows:

* * * * *

2. On successions passing to any person mentioned in the third sub-paragraph of the preceding section.

(Five, six, seven and eight percent graduated according to the amount are imposed).

3. On all successions passing to persons other than those hereinbefore mentioned. * * *

(Seven, eight, nine and ten percent, graduated according to the amount, are imposed).

The attention of this department has been called to the decision in *Matter of Ray*, 35 N. Y. Supp. 471. This case, construing identical language, holds that the words "husband of a daughter" have a meaning broad enough to include the husband relict of a deceased daughter even though he has remarried. The facts in the case make the principle which it announces appear more or less absurd. The opinion, however, proceeds upon the basis of the alleged fact that in the code of civil procedure, the statutes of descent and distribution and elsewhere in numerous unmentioned related statutes of the state of New York, and in what the court declares to be common usage in that state, a man continues to be the "husband" of a woman after she is dead.

This department knows of no such similar common usage in this state. cursory examination of the statutes of dower, descent and distribution discloses that a person in such a situation is referred to repeatedly as a "widower," and is only referred to as a "husband" when the word is qualified by the word "relict."

It is impossible, therefore, for this department to say that the statutes or common usage in Ohio overrule the presumption of legislative intent, arising from the words used in the statute, namely, "the wife or widow of a son, the husband of a daughter," to the effect that if the widower" or "husband relict" of a daughter had been intended to be embraced in this class, he would have been designated by some such appropriate term, inasmuch as the general assembly has not failed specifically to mention in the same context the "widow of a son."

The only remaining point for consideration is one which has been frequently referred to in the opinions of this department interpreting the inheritance tax law, namely, that the law of 1919, being closely modeled after the New York transfer tax law should receive such an interpretation as the latter law had been given by the courts of New York prior to the enactment of the Ohio law.

This sound principle of statutory interpretation applies only when it is clear that there has been a virtual adoption by one state of a statute of another. Many of the provisions of the Ohio inheritance tax law of 1919 were so adopted from New York. This particular language, however, was not borrowed from that source, but follows language which was found in the former collateral inheritance tax law of Ohio. See section 5331 of the General Code of 1910 where the phrase "the wife or widow of a son, the husband of the daughter of the decedent" appears.

It seems to this department, therefore, that on this point the Ohio inheritance tax law should receive a local interpretation. Inasmuch then as the New York decision was based upon local policy and usage, and even so, scarcely commands respect; and inasmuch, further, that the language requiring interpretation originated in Ohio, and is to be construed without reference to decisions in other states, especially when they depend upon local policy and usage, it is the opinion of this department that the widower of a daughter is not comprised within the third class created by section 5334 of the General Code under the designation of "husband of a daughter", and not being mentioned elsewhere in that section, is a successor not entitled to any exemption, and to whose succession the seven per cent. rate prescribed by section 5335 of the General Code applies.

SECRETARY OF STATE

NEW CORPORATIONS

The United Radio Co., Columbus, \$500. H. A. Shoenberger, Stephen L. Young, J. B. Sanford, H. W. Welsh, G. Johnson.

The Southern Ohio Oil & Gas Co., Portsmouth, \$30,000. W. S. Kent, C. A. Crabtree, Wiley Riffle, Robert Shelton, Thomas J. Hartley.

The Iten Fibre Co., Cleveland, \$50,000. Charles J. Iten, J. Paul Thompson, W. J. Dawley, E. K. Curtiss, George S. Myers.

The Ashtabula Cement Products Co., Ashtabula, \$500. John A. Elden, F. A. Warren, C. C. Carter, R. E. Bartholomeu, O. E. Seidel.

The Greenlee Coal Co., Bellaire, \$10,000. James F. Cook, W. G. McClain, St. Clair Archer, Arthur A. Beckman, L. L. Cunningham.

The R. C. Blake Co., Willard, \$25,000. Roy C. Blake, W. F. Mehrling, T. W. Beelman, Florence Beelman, Mabel Blake.

The Team Co-operative Co., Tema, \$20,000. Zender Laudahn, May Palmer, W. T. Palmer, A. D. Behymer, Velonne Palmer.

The Tiffin Construction Co., Tiffin, \$10,000. Carl W. Baumgardner, J. E. Rupert, Adellbert R. Keller, Forrest R. Miller.

The Gordon Gardens Amusement Co., Cleveland, \$10,000. Emil E. Berger, James B. Wolf, Lucille F. Berger, Flora E. Berger, M. E. Lewis.

The Frank Linn Realty Co., Cleveland, \$10,000. Alex Papp, Maria Papp, F. A. Linsky, Anna Linsky, Leo L. Linsky, Steve Szabo.

The Morwin Auto Sales Co., Cleveland, \$5,000. Frank G. Mooney, Irwin N. Loeser, Ira J. Warner, Monroe A. Loeser, I. L. Nichols.

The Ohio Film Co., Cincinnati, \$25,000. Errett L. Kenep, Lawrence Bueche, Sr., Lewis M. Nowlin, Carl L. Graeser, Chas. Tatgenhorst, Jr.

The Toledo Sanitarium Co., Toledo, James A. Belyea, R. B. Bowen, Oscar Hasencamp, Gustavus Anger, Wm. E. Funke.

The Community News Co., Cleveland, \$2,000. John A. Elden, Bert N. Roberts, C. E. Lonsway, W. J. Martin, H. G. House.

The Eastern Theatre Co., Ironton, \$30,000. Louis J. Frecka, W. L. Schweickart, Claude L. DeHaven, C. E. Ward, W. E. Ball.

The Farmers State Bank, Lyons, \$25,000. W. H. Standish, H. C. Rathbun, Clyde Dunbar, Scott Smith, Gordon Stong, Charles Holt, R. T. Carpenter, F. T. Sullivan.

The Capitol Coal Co., Cleveland, \$500. Harry Jaffe, Maurice A. Winograd, Max R. Danaceau, Abraham Laven, M. Sitnek.

The Seneca Mortgage Co., Tiffin, \$5,000. John H. Bennehoff, Vinton A. Bennehoff, Ida A. Bennehoff, Edna G. Bennehoff, Earl D. Chapman.

The Lakeshore Auto Service Co., Cleveland, \$10,000. Alexander S. Kraus, Sarah Z. Cramer, Morris Cramer, Jerome B. Goldman, Sam Fink.

The Lake Erie Knitting Mills Co., Cleveland, \$5,000. Eugene E. Wolf, Julius Bloomberg, I. Shenker, H. M. Wikisal, K. F. Litman.

The Micro-Meter Co., Sidney, \$500. A. J. Pocock, Paul C. Pocock, W. E. Whipp, Robert Pocock, Harry W. Crist.

The Adam Hoffman Co., Cleveland, \$15,000. E. M. Hoffman, R. L. Hoffman, L. M. Hoffman, Christene Nagel, Louise Hoffman.

The Holmes & Curl Co., Cincinnati, \$25,000. Donald E. Holmes, Ralph R. Curl, Edith M. Holmes, Wilhelmina M. Curl, John J. Behle.

The Youngstown Stewarts Co., Youngstown, \$50,000. Maurice Kivowitz, E. S. Schreckinger, I. Schreckinger, Rae Goldman, Jack May.

The Consumer's Baking Co., Cleveland, \$500. A. H. Elliott, F. E. Wrentmore, M. E. Nyquist, W. W. Wilson, B. D. Holt.

The Reiter-King-Dugan Co., Akron, \$1,000. R. H. Reiter, L. L. King, M. E. Amer, H. H. Stehle, F. F. Dugan.

The Vinewood Land Co., Cleveland, \$25,250. Willard J. Hays, H. D. Weinstein, J. L. Donnelly, Jacob L. Weinstein, Margaret Becker.

The Euclid Fairmount Co., Cleveland, \$500. Alonzo M. Snyder, David K. Ford, George M. Roudebush, L. E. O'Callaghan, N. I. Young.

The Power Improvement Co., Cleveland, \$675,000. Charles F. Cox, Eugene Rider, Frank J. Fissinger, George E. Peterson, J. McKay.

The B. M. Ellis Motor Co., Columbus, \$3500. B. M. Ellis, Francis M. Babbitt, Charles S. Druggan, J. E. Harper, C. Lowensohn.

The Brisol Co., Canton, \$100. Pedro Alvarez Lopez, John A. Lopez, Santos Alenso, Modesto Vazquez, Manuel Conception.

The Wood County Holstein Breeders Co., Bowling Green, \$2500. Lorin Nelson, R. M. Strow, L. E. Wight, H. E. Ash, E. M. Lamb.

The Pizza Bros. Co., Toledo, \$10,000. Toby Pizza, Rocco Pizza, George Pizza, Alexander Pizza, Filomena Pizza.

The Warren Engineering Co., Warren, \$10,000. Guy E. Dowling, Harry L. Sauer, P. W. Dowling, A. M. Sauer, H. V. Dowling.

The Inter-City Transit Co., Columbus, \$50,000. C. H. Frazer, C. E. Young, J. H. Ray, Carl Johnson, E. G. Lloyd.

The Ajax Engineering & Improvement Co., Columbus, \$10,000. Donald W. Althouse, Jos. V. Priore, Ralph S. Conley, Harold S. Isabel, Carl M.

The Amusement Credit Exchange Co., Cleveland, \$1,000. Ada E. Rogers, E. J. Warrick, H. E. Allport, H. L. Deibel, L. M. Sewell.

The Schuster Realty Co., Cleveland, \$50,000. W. F. Maurer, E. R. Dolin, T. B. Bolton, John F. Wilson, E. H. Bevier.

The Lincoln Motor Body Co., Toronto, \$15,000. Leonard S. Owings, Arnold Davis, Jr., Frank M. Meyer, James S. Owings, Frank C. Foss.

The Ohio Arizona Mining Co. Chillicothe, \$100,000. Coit L. Blacker, J. D. Withgott, F. E. Scott, A. W. Blacker, W. M. McKenzie.

The Advance Mortgage Co., Beachwood, \$10,000. Lillian E. O'Callaghan N. I. Young, M. A. Macroni, Mark L. McCave, Lillian B. Zweig.

The Uberstein Drug Co., Cleveland, \$10,000. Max Uberstine, Sarah M. Uberstine, Jacob Weinstein, A. D. Glora, M. Ginsburg.

The Jos. Gentile Co., Cincinnati, \$500,000. Joseph Gentile, Leonard Gentile, N. F. Pettis, Chas. M. Leslie, Clarence M. Smith.

The Cincinnati Curled-Hair Co., Cincinnati, \$25,000. James L. Rick-

etts, Chas. H. Lenz, John Gates, Jr., David J. Schopper, Charles W. Stevenson.

The Union Service Co., Canton, \$50,000. W. C. Seran, G. W. Scott, C. R. Bader, Frank B. Melchior, Wendell Herbruck.

The Worthy Loan Co., Cleveland, \$5,000. R. Gordon, J. Kleinman, Barey Savransky, B. Savransky, A. Fleishman.

The Liberty Radio Co., Dayton, \$500. Louis E. Cohn, H. L. Beeler, Ed. J. Dill, M. N. Steele, A. W. Schulman.

The Broughton Sales Co., Akron, \$25,000. E. W. Broughton, R. A. Palmer, Carl E. Schoner, Orin E. Wolf, S. A. Affleck.

The Weaver Milk Shoppe, Co., Dayton, \$5,000. I. M. Justice, J. C. Weaver, Luella N. Weaver, Fred E. Allen, Edith E. Allen.

The United States Optical Co., Cleveland, \$1,000. Chas. M. Knight, W. O. Gonper, Arthur C. Knight, F. M. Pritts, R. L. Kornfeld.

The Dagher Holland Constr. Co., Cleveland, \$10,000. L. J. Kohn, Jos. A. Klein, Chas. E. Phipps, L. M. Wilson, D. C. Wilson.

The National Celeste Phone Co., Cleveland, \$500. Edward Younger, L. M. Sewell, H. L. Deibel, A. E. Rogers, A. J. Pejsa.

The Ohio Celeste Phone Co., Cleveland, \$500. Edward Younger, L. M. Sewell, H. L. Deibel, A. J. Pejsa, A. E. Rogers.

The Electro-Novelty Co., Shelby, \$500. William D. Hood, George Vuille, Arthur Johnson, C. O. Sellen, C. S. Moore.

The Massillon Legion Club Co., Massillon, \$12,000. C. P. Weeks, J. Edward Johns, Dale G. Derwalt, Harry H. Oberlin, George J. Pinis.

The Radio Accessories Mfg. Co., Cleveland, \$10,000. Austin R. Herske, M. B. Rubin, Sara C. Nebel, Sophie V. Herske, E. A. Nebel.

The Reserve Sigma Nu Co., Cleveland, \$500. T. B. Scott, M. C. Newton, Carl S. Bechberger, M. E. Evans, Perry D. Caldwell.

The Home Food Co., Cleveland, \$25,000. A. H. Elliott, F. E. Wrentmore, M. E. Nyquist, B. D. Holt, R. C. Wheeler.

The South Cleveland Baking Co., Cleveland, \$10,000. Sara Guest, M. W. Kramer, Harry England, Paul D. England, Arthur E. Kalish.

The Warren Savings & Loan Association, Warren, \$5,000,000. M. L. Higgins, H. B. Mallette, W. P. B. Wachtel, W. W. Richmond, Donald C. Van Buren.

The Republic Glass Co., Cleveland, \$500. N. I. Young, L. E. O'Callaghan, Mark L. McCave, M. A. Maroni, Lillian B. Zweig.

The Miami Radio Corporation Co., Dayton, \$500. William Henry Petit, William S. Schleman, George E. Keller, R. N. Brumbaugh, W. F. Miller.

The Thomas La Maida Co., Cleveland, \$500. Max E. Meisel, F. C. Raymond, L. T. Kelly, E. M. Martin, W. R. Weidenthal.

The F. J. Shively Co., Canton, \$50,000. F. J. Shively, Walter D. Schrantz, Thomas S. Weston, Marie Shively, Jennie Shively.

The Gilbert Auto Electric Co., Mansfield, \$10,000. Rex. W. Gilbert, Dan R. Wolff, E. J. Gilbert, A. J. Gilbert, M. C. Gilbert.

The Election Relay Co., Toledo, \$10,000. William F. Mack, Elmer Cooney, Helen L. Christopher, Zelma Harding, Lucile T. Paine.

The Thrift Dry Cleaning and Repair Shops Co., Toledo, \$10,000. C. W. F. Kirkley, O. J. Smith, Zelma Harding, John B. McMahon, Lucile T. Paine.

The Government Savings & Loan Co., Cambridge, \$1,000,000. D. Clyde Wilson, Richard H. Moore, M. R. Hoffman, Owen P. Moore, John McIntosh.

The William Herbert & Son Co., Youngstown, \$100,000. Paul J. Herbert, E. Maiden, Jr., Arthur Morgan, Randall H. Little, W. Paul Reigelman.

The Eddy-St. Clair Realty Co., Cleveland, \$500. J. S. Pressman, S. H. Bloomfield, Isaac Pressman, L. I. Sattes, J. B. Gluck.

The Happy Home Steam Washing Machine Co., Logan, \$50,000. C. T. Warren, Estella Hartley, Isabella Barker, Charles F. Barker, Ada Cohagen.

The Eastern Star Temple Co., Dayton, \$40,000. W. A. Marietta, Jos. H. Wilcox, Warren C. Deem, H. S. Leonard, Jos. R. Ebright.

The Lauber Clothing Co., Dayton, \$15,000. John R. Lauber, Catherine Lauber, Katie Matusoff, Charles W. Dale, John Matusoff.

The Kemper-Thomas Co., Norwood,

\$580,000. E. B. Danson, S. W. Allen, Will C. James, D. J. Parry, Roy J. Bernard.

The Students' Shoppe Co., Warren, \$5000. Roy E. Levy, Daniel Levy, Blanche H. Levy, S. H. Levy, Gabriel Levy.

The Township Concrete Products Co., Dayton, \$50,000. Charles A. Ney, Alfred L. Michael, Clyde O. Dafler, Clarence B. Dutton, A. C. Rice.

The Economy Furniture Co., Canton, \$25,000. M. J. Rose, Herbert L. Worms, Arthur B. Rose, S. Rose, Catherine Johnson.

The J. T. Sales Co., Cleveland, \$500. Charles Follett, Walker H. Nye, John W. Eckelberry, Neil P. Beall, L. C. Wykoff.

The Jeavons Mfg. Co., Cleveland, \$8,000. D. K. Henderson, Stella Faaller, I. M. Tyndall, J. T. Ward, Louis Bloomfield.

The Surety Savings & Loan Co., Warren, \$1,000,000. E. Percy Creswell, Fred M. Denison, C. W. Barnes, H. H. Montis, E. V. Maguire.

The Temple Recreation Co., Akron, \$7500. Vernon Maginnis, Arthur Sweeny, Louis C. Hugulet, Howard Tham, Charles Aston.

The Hotel Merchants' Co., Toledo, \$10,000. Bruce R. Smith, Orma G. Shirey, Florence P. Chase, Goldie M. Smith, Grover E. Smith.

The Scarab Oil Co., Columbus, \$50,000. K. J. Saile, C. L. Dirker, H. Bender, M. C. Callinan, Alice Saile.

Increases

The Wadsworth Co., Akron, from \$20,000 to \$60,000.

The Formica Insulation Co., Cincinnati, from \$100,000 to \$150,000.

The Sycamore Savings & Loan Co., Cincinnati, from \$1,000,000 to \$3,000,000.

The General Building & Improvement Co., Cleveland, \$25,000 to \$75,000.

The Weyand & Baetz Co., Cleveland, \$20,000 to \$50,000.

The K-D Lamp Co., Cincinnati, \$50,000 to \$100,000.

The Sanitary Cement Products Co., Cleveland, \$6,000 to \$15,000.

Decreases

The Atlantic Foundry Co., Akron, \$1,000,000 to \$985,300.

The Great Lakes Smelting Co., Cleveland, \$90,000 to \$9,000.

PUBLIC UTILITIES COMMISSION

No. 2565—In the Matter of the Application of The Toledo Edison Company for Authority to Issue Certain of its First Mortgage Gold Bonds, Five Per Cent. Series, Due 1947.—Prayer Granted.

(Dated June 6, 1922.)

This day, it appearing to the Commission from the verified allegations contained in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, this matter came on for consideration upon the application, as amended, of The Toledo Edison Company, (a corporation duly organized and existing under and by virtue of the laws of the state of Ohio), for the consent and approval of this Commission to issue and dispose of \$768,000 principal sum, of its first mortgage gold bonds, five per cent. series, due 1947, the proceeds to be applied toward the reimbursement of its treasury for seventy five per centum of the uncapitalized, capital expenditures therefrom within the five years next preceding the date of the filing of the application herein and to the thirty-first day of March, 1922.

The Commission, being fully advised in the premises, finds from the pleadings and exhibits filed herein and its independent inquiry and investigation thereupon:

That, within the five years next preceding the date of the filing of the application herein and specifically, between the dates June thirtieth, 1921, and March thirty-first, 1922, the applicant actually expended from its treasury for the construction, completion, extension and improvement of its facilities, the sum of \$1,036,027.35, seventy-five percentum of \$1,024,413 whereof, may be bonded under the applicant's first mortgage, none of which moneys were obtained by the issue of stock, bonds, notes or evidences of indebtedness, and the capitalization of which has not heretofore been authorized by order of this Commission;

That the issue of applicant's said first mortgage bonds of the principal sum of \$768,000 is reasonably required and the money to be procured thereby is necessary for the reimbursement of applicant's treasury for and on account of the aforesaid uncapitalized capital expenditures therefrom,

and is satisfied that consent and authority for the issue and disposition of said bonds should be granted. It is, therefore,

Ordered, That said The Toledo Edison Company be, and hereby it is authorized to issue its first mortgage gold bonds, five per cent. series, due 1947, of the principal sum of seven hundred and sixty-eight thousand dollars (\$768,000.00), and that said bonds be sold for the highest price obtainable but not less than eighty-three (83) percentum of the principal amount thereof. It is further

Ordered; That any discount arising from a sale of said bonds for less than the principal sum thereof be amortized pursuant to the rules and regulations heretofore prescribed by this Commission. It is further

Ordered, That the proceeds arising from the sale of said bonds be devoted to and applied toward the reimbursement of applicant's treasury for the sum of \$1,036,027.35 (not procured by the issue of stock, bonds, notes or other evidences of indebtedness) actually expended therefrom, within the period June thirtieth, 1920 to March thirty-first, 1922, for the construction, completion, extension and improvement of its facilities, not heretofore capitalized or authorized to be capitalized by order of this Commission. It is further.

Ordered, That the applicant make verified report to this Commission of the issue and disposition of said bonds and the expenditures of the proceeds thereof pursuant to the terms and conditions of this order.

✽

Advanced Utility Rate Proceeding No. 75—In the Matter of the Proposed Increased Rates and Charges of The Cleveland & Eastern Traction Company, Filed to Become Effective December 5, 1921.

(Dated June 6, 1922.)

This day this matter came on for consideration and it appearing from representations made to the Commission by counsel for the complainant that the parties hereto have agreed that the complaint heretofore filed herein may be withdrawn and that the rates and charges provided in the schedule herein suspended may become effective as of today, it is

Ordered, That the rates and charges provided in The Cleveland & Eastern Traction Company's schedule designated P. U. C. O. No.

2 heretofore suspended herein, be, and hereby they are made effective as of the date of this order. It is further

Ordered, That said, The Cleveland & Eastern Traction Company, be, and hereby it is authorized to correct, by interlineation in red ink, the effective date of said schedule P. U. C. O. No. 2 to conform hereto. It is further.

Ordered, That the order heretofore made and entered herein suspending the going into effect of said schedule P. U. C. O. No. 2 be, and hereby it is revoked and that this proceeding, be, and hereby it is discontinued.

✽

No. 2555—In the Matter of the Purchase by The Dayton Power and Light Company of all the Property and Business of the Brookville and Lewisburg Lighting Company in and About the Village of Brookville, Ohio.—Prayer Granted.

(Dated June 6, 1922.)

This day, it appearing to the Commission from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, this matter came on for consideration upon the joint application of The Brookville and Lewisburg Lighting Company and The Dayton Power and Light Company, (corporations duly organized and existing under and by virtue of the laws of the state of Ohio), asking the consent to and approval, by this Commission, of the sale, by said first named applicant, and the purchase by the latter, of all the property and business of said The Brookville and Lewisburg Lighting Company in and about the village of Brookville, Ohio.

The Commission, being fully advised in the premises, finds from the pleadings and exhibits filed herein and its independent inquiry and investigation thereupon:

That, for purchase and sale purposes, the value of the property and business of The Brookville and Lewisburg Lighting Company in and about the Village of Brookville, Ohio, is not less than the sum of \$18,000, and

That the public will, upon such sale and purchase of said public utility property, be furnished adequate service for a reasonable and just rate, rental, toll or charge therefor,

and is satisfied that consent and authority for such sale and purchase of said public utility property should be granted. It is, therefore,

Ordered, That said The Brookville and Lewisburg Lighting Company be, and hereby it is authorized to sell and convey to The Dayton Power and Light Company all of its property and business in and about the village of Brookville, Ohio; and said The Dayton Power and Light Company hereby is authorized to purchase and acquire the same, and to pay therefor the agreed consideration of \$18,000.00. It is further

Ordered, That, forthwith upon the exercise of the authority herein granted, said parties file with this Commission schedules providing for their respective withdrawal from and inauguration of service within the territory now served by means of said property. It is further

Ordered, That nothing herein shall be construed to be a consent to or approval by this Commission of any increase in rates or diminution of service within the territory now served by means of said property, nor shall the findings hereinbefore set forth as to the value of said property, rates and service be bidding upon this Commission in any future proceeding involving rates and/or service.

ATTORNEY GENERAL

A Board of Education in Fixing the Salary of its Superintendent of Schools May not Fix Such Salary at a Specified Amount and Provide That in Addition Thereto the Superintendent Shall Receive a Certain Percentage of the Foreign Tuition Collected, for the Reason That Such Payment Would not be a "Fixed" Salary as Intended by Section 7690 of the General Code, and Such Superintendent is not a Bonded Employee of the District.—The Duty of Receiving School Funds is Imposed Upon the Treasurer of the School District and Under the Provision of Section 7682 G. C. (109 O. L., 373) All Money Received for Tuition From Foreign Districts Shall in All Cases, Upon its Receipt, be Placed in the Tuition Fund.

No. 3140—(Opinion Dated May 25, 1922.)

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

Gentlemen: Acknowledgment is made of the receipt of your communication in which you submit the following question for the opinion of this department:

"In fixing the salary of its superintendent of schools, may a board of education of a city district fix such salary at a specified amount and provide that in addition thereto the superintendent shall receive a certain percentage of the foreign tuition collected, at the same time making it the duty of the superintendent to collect such tuition?"

In considering this question your attention is invited to the recent decision of the Supreme Court in the case of *State of Ohio ex rel. Clark vs. Cook*, decided on November 22, 1921, the second branch of the syllabus reading as follows:

"2. Boards of education, and other similar governmental bodies, are limited in the exercise of their powers to such as are clearly and distinctly granted. (*State ex rel. Locher, Pros. Atty., v. Menning*, 95 Ohio St., 97, approved and followed.)"

An investigation of the records of this department shows that a question largely similar to the one you submit was passed upon about ten years ago by the then attorney general. The question under consideration at that time was whether a board of education could legally employ a superintendent of schools at a stated salary

per month and in addition give him the tuition from the non-resident pupils as a part of his salary, if the board of education so desired. This inquiry was answered in Opinion 371, issued on April 30, 1912, and appearing at page 491, Vol. 1, Opinions of the Attorney General for 1912, the syllabus reading as follows:

"A board of education may not provide that the superintendent of schools shall receive, in addition to a stated salary all funds received for tuition of non-resident pupils, for the reason that such payment would not be a 'fixed' salary as intended by Section 7690, General Code.

"Furthermore, such would be in contravention to Section 7603, General Code, which provides special distribution for the respective funds under the control of the board."

It will be noted that this opinion was issued prior to the enactment of what was known as the Ohio School Code of 1914, and it is therefore necessary to examine the statutes in force at this time to ascertain whether a different view would follow at this time, since it is found that the sections of law discussed in Opinion 371 have been amended since 1912.

The general authority to elect a superintendent of schools in any district appears in Section 7690 G. C., which reads in part as follows:

"It (the board of education) may elect, to serve under proper rules and regulations, a superintendent or principal of schools and other employes, including, if deemed best, the superintendent of buildings, and may fix their salaries."

The specific section bearing the election of a superintendent of schools in a city school district is section 7702 G. C., which says:

"The board of education of each city school district at a regular meeting between May 1st and August 31st, shall appoint a suitable person to act as superintendent of the public schools of the district. * * *"

The manner of electing the superintendent of schools is set forth in Section 4752 G. C., which provides that he shall be elected, as other business of the board is transacted, by public roll call of the members composing the board. However, in none of these sections mentioning the superintendent of schools is there any reference made to his specific duties, your question being as to whether the board of education could make it the duty of the superintendent in a city district to collect tuition due from foreign pupils and then provide that in addition to the fixed salary of the

superintendent he shall receive a certain percentage of the foreign tuition collected.

For a comprehensive analysis of the word "fix" your attention is invited to the language appearing in Opinion 2458, issued by this department on October 10, 1921, wherein it is said:

"To 'fix' a compensation is to prescribe a rule or rate by which it is to be determined." *Flagg v. County*, 51 Ore., 172, 177, 178. In *Zimmerman v. Canfield*, 42 O. S., 463, 467, 468, compensation was held to be fixed, within the meaning of a statute requiring the commissioners to fix compensation for lands appropriated, when the amount to be allowed was 'determined upon.' To fix the value of the property' was held in *People v. Nassau Co.*, 104 N. Y. Supp., 350, 356, to mean 'final determination.' Also, 'to decide definitely; make sure; settle; determine.' In *Gas Co. v. Peru*, 89 Fed., 185, 189, it was said that 'fix' in an ordinance authorizing council to 'fix the rate' to be charged for gas, means 'to make fast, firm, or immovable.' In *Crickett v. State*, 18 O. S., 9, 21, the duty imposed upon the general assembly to 'fix * * * the compensation' of officers, was held discharged when that body 'shall prescribe or 'fix' the rule by which compensation is to be determined.' In *Huck v. Gaylord*, 50 Tex. 578, 582, the court employed Worcester's definition, viz: 'Worcester defines the word fix "To settle or remain permanently."' The word 'fix' is also defined in Funk and Wagnall's New Standard Dictionary, viz: 'To decide definitely; make sure; settle; determine.' And in *Hedrick and Walden's Cases*, 16 Ct. of Claims, 88, it was held that 'a salary is "fixed" when it is at a stipulated rate for a defined period of time.'

In the case of *State of Ohio ex rel Clark v. Cook*, decided in November, 1921, and reference to which has heretofore been made, the court spoke as follows upon the question of the fixing of a salary, to-wit:

"The express power to fix a salary does not grant by implication the power to unfix said salary. The exercise of the power agreeable to the statute exhausts that power agreeable to the statute. The power to change after once fixed, from the language of the *Locher* case, *supra*, shows that such power is not 'clear and distinctly granted.' The power not being so granted to the board of education, cannot be exercised by the board of education, and its attempted exercise thereof is ultra vires. The action of the board of education is attempting to change the salary of the county superintendent, after once fixed, is illegal and void under the statute."

It would appear, then, that in the light of these previous opinions and court decisions a board of education in fixing the

salary of its superintendent of schools at a designated amount, and then providing in addition that such superintendent should be allowed a certain percentage of foreign tuition collected, would not be such a fixing of the salary of such superintendent as is contemplated by the statutes. It is clear that no one has knowledge at the beginning of a school year as to what the amount of foreign tuition collected might be and thus it would be impossible to arrive at any fixed amount which would equal a certain percentage or fraction of the foreign tuition collected. A superintendent might be employed for a series of years and since this tuition collected would be one thing in one year and another thing in another year, it is apparent that the salary of the superintendent, instead of being fixed as contemplated by law at the time of employment, would be different in one year than in another. However, there is another point worthy of consideration in this case and that is whether it is proper for the board of education to employ some one to perform work or duties which already devolve upon another employe of the board who is properly bonded and whose salary is presumed to be fixed, with the knowledge on the part of the board and the officer himself receiving such salary that such salary is in satisfaction of all services to be rendered in that office by the person occupying it.

Under recent school legislation, requiring districts not supporting high school to pay the tuition of their pupils at an adjoining high school the amount of tuition which is paid from one district to another is frequently a very considerable amount in a number of cases. This tuition per capita is set forth under Section 7747 G. C. to be computed in a certain way by dividing the cost of the high school, plus a certain per cent. to be added as appearing in that section, by the number of pupils who are instructed in the school. In filling out various forms required in taxation and the apportionment of school funds, and in the making of its budget for the next year, the board of education will always take into consideration what its receivable foreign tuition is likely to be. This foreign tuition received from another district belongs in the treasury of the district which performs service and the person in charge of the treasury of the receiving district is the clerk-treasurer of the board of education.

Prior to the time of the adoption of Section 4782, the offices and duties of the treasurer of a board of education and the clerk were entirely distinct, but under Section 4782 the clerk shall now per-

form all the duties placed upon the treasurer of the board of education by various sections of the law.

A case distinguishing between the duties of a clerk of a board of education and the duties of a treasurer of a board of education prior to the combining of the two activities, under one person, is that of *State vs. Griffith*, 74 O. S., 80, decided April 3, 1906, in which the court said on page 93:

"* * * The duty of receiving, keeping and disbursing funds seems to be exclusively imposed upon the treasurer of the district."

As amended in 104 O. L., 158, Section 4782 reads in part as follows:

"* * * the clerk of the board of education of the district shall perform all the services, discharge all the duties, and be subject to all the obligations required by law of the treasurer of the school district."

Section 4782 was amended in 108 O. L., Part 1, p. 704, but the above language, as appearing in 104 O. L. was not changed and such is the law today, that the clerk of the board of education shall perform the services and discharge all the duties, and be subject to all the obligations required of the treasurer in a school district.

"* * * The clerk of the board of education can receive extra compensation for performing the duties of treasurer of such board, and the board of education has the legal right to fix the compensation of such clerk, when he is required to perform the added duties of treasurer of the board of education * * * under Section 4782, General Code." (Opinion No. 1141, Annual Report of the Attorney General for 1914.)

The officers of each board of education are elected on the first Monday of January; a clerk is chosen for a term not to exceed two years, but no treasurer is elected because of the language of Section 4782, *supra*. The position of clerk in a board of education is a very important one, the law contemplating that at no time shall it be vacant. To illustrate, Section 4753 G. C. provides that if the clerk is not present at a meeting, then the members shall choose one of their number to serve in his place until the appearance of the clerk at the meeting. Under Section 4754 G. C. the clerk shall record the proceedings of each meeting and these minutes shall be read at the next meeting, approved by the board, signed by the president and attested by the clerk. Among the things which should appear in the minutes of the board of education in these

meetings would be the status of tuition accounts, either where the district in question owed an adjoining district, or where, on the other hand, the adjoining district owed the local district. If the collection of tuition were left in the hands of some one other than the clerk-treasurer of the board, then the board would not have before it at the time of its meeting, when action might be desired, the exact statutes of tuition accounts, where the district was either the creditor or the debtor. Other sections indicating the importance of the office of clerk-treasurer are Section 4756, where the clerk shall execute all deeds required for the transfer of property, and Section 4757, where the clerk shall assist in the execution of all conveyances of any kind. Similarly under Section 4760 process in all suits against boards of education shall be by summons served upon either the clerk or the president of the board. If there were litigation pending in a tuition case, under no circumstances could the process be made upon the superintendent of schools in the district but would have to be upon the clerk or president of the board, even though the tuition account due had been paid to a superintendent but not turned into the clerk-treasurer of the district. Of special importance is the requirement in 4764, which says:

"Before entering upon the duties of his office, each school district treasurer shall execute a bond, with sufficient sureties in a sum not less than the amount of school funds that may come into his hands, payable to the state, approved by the board of education and conditioned for the faithful disbursement according to law of all funds which come into his hands * * *, the bond * * * in such amount as the board of education may require." (101 O. L., 264.)

Here it is directly provided that the treasurer (who is at present also the clerk of a board of education) shall at all times be under sufficient bond in a sum greater than the amount of school funds "that may come into his hands"; among these funds that come into his hands are the tuition funds which are paid by foreign school districts. If it should happen that these tuition funds received could not be found in the hands of the treasurer at the time of any examination, his bond executed under section 4764, G. C., amply protects the board of education and the school district itself. However, if the collecting and temporary keeping of these tuition funds is turned over to another employe, such as a superintendent of schools, who is not under bond, then the protection contemplated in 4764 on all the school funds of any kind, at any time, would not be present. Further safeguards as to the funds in the

hands of the treasurer of a school district appear in sections 4767, 4768, 4769 and 4770 of the General Code. Under Section 4767, if there was a change in the office of clerk-treasurer during a period when another school employe had in his charge the collection of these tuitions funds, then the counting of funds provided for in 4767 could not be fully carried out, because this counting of funds must take place at the time of the approval of any new bond, and there shall be entered upon the record of the board a certificate setting forth the exact amount of money so found in the hands of such treasurer. If a foreign district had paid tuition to an employe of a local district, other than the clerk-treasurer of the local district then such tuition funds might not be in the treasury at the time of the counting, though they would be if the clerk-treasurer had received such tuition collections from the foreign board.

Section 4767 says further:

"Such record shall be signed by the president and clerk of the board and be prima facie evidence that the amount therein stated was actually in the treasury at that date."

Section 4768 reads in part:

"* * * no money shall be paid to the treasurer of the district other than that received from the county treasurer, except upon the order of the clerk of the board, who shall report the amount of such miscellaneous receipts to the county auditor each year immediately preceding such treasurer's settlement with the auditor."

Among the miscellaneous receipts referred to in 4768 are the amounts of tuition received from foreign school districts. This section further indicates that since all of these miscellaneous receipts are school moneys and belong in the treasury of the school district and since it is the duty of the treasurer of the board of education to receive the moneys due a board of education, it would not be proper to grant a certain percentage of tuition amounts due to another person as compensation for the collection of such tuition amounts.

Section 4769 reads:

"* * * Before giving such treasurer a warrant or order for school funds, the auditor may require the treasurer to file with him a statement showing the amount of such funds in his possession signed by the clerk of the board of education."

Section 4770 reads in part:

"Within the first ten days of September, each year, the treasurer shall settle with the county auditor for the preced-

ing school year, and for that purpose he shall make a certified statement showing the amount of money received, from whom, and on what account, the amount paid out and for what purpose. * * *

If the clerk-treasurer was the person to receive foreign tuition, then he would always have on his books an exact statement of all the moneys received and for what purpose, where if another person were collecting these foreign tuition accounts, the clerk-treasurer might have these entries on his books and again he might not. The contemplation of the law is not that he should go out and seek some one and get this information in order to have his books correct at the time of any settlement or official examination.

Reference to the bond of the clerk of the board of education also appears in 4774, G. C.

Section 4775, G. C., provides that the clerk shall prepare an annual report "of the receipts" and expenditures of school money and the statistical statement in reference to the school, and transmit the same to the county auditor by September 1st. The section further says:

"But in each school district having a superintendent of schools, such report, except the receipts and expenditures of money, shall be made by the superintendent."

From the language of the above section it appears that the superintendent of schools must have nothing to do with receipts and expenditures of money, that being left to the clerk-treasurer of the school district.

Under the provisions of Section 4776, G. C., the clerk of the board shall prepare annually, ten days prior to the election, "an itemized statement of all money received and disbursed by the treasurer of the board within the school year next preceding," and post at the place of holding such election, or print in some newspaper of general circulation in the district. The reference here to "all money received * * * by the treasurer of the board" includes tuition payments made by foreign districts. Section 4776, as regards this report, is applicable to all school districts in the state, except city districts where the clerk is not required to publish this statement prior to an election. See also Sections 4778, 4779, and 4780, G. C. Thus Section 4780, G. C., reads in part:

"The treasurer's accounts shall show the amounts received from * * * other sources on the order of the clerk * * * and for what purposes paid. A separate account of each fund

must be kept, and each account balanced at the close of the school year, and the balance in the treasurer's hands belonging to each fund shown."

Section 4781, G. C., reads in part:

"The board of education of each school district shall fix the compensation of its clerk and treasurer, which shall be paid from the contingent fund of the district. If they are paid annually, the order for the payment of their salaries shall not be drawn until they present to the board of education a certificate from the county auditor, stating that all reports required by law have been filed in his office. * * *"

One of these reports required by law to the county auditor is the amount of foreign tuition received and if the board of education had given the duty of collecting foreign tuition to another school employe, the clerk-treasurer could not make out this report intelligently, since he had not made these collections himself and would not have exact knowledge as to the tuition accounts, unless the tuition accounts collected had been promptly turned in and he would thus make his report upon the statement of another return than what he officially knew to be the facts himself.

Section 4783, G. C., provides:

"When the treasurer is * * * dispensed with, all the duties and obligations required by law of the county auditor, county treasurer or other officer or person relating to the school moneys of the district shall be complied with by dealing with the clerk of the board of education thereof. Before entering upon such duties, the clerk shall give an additional bond equal in amount and in the same manner prescribed by law for the treasurer of the school district."

Under the provisions of Section 7586, G. C., each board of education annually, prior to the first Monday in June, "shall fix the rate of taxation necessary to be levied for all school purposes" after the state funds are exhausted," and this tax levy for tuition purposes in a school district may rise or fall according to the amount of foreign tuition collected and put in the treasury of the school district prior to the time of preparing the annual budget for the preceding year. It is not the contemplation of the law that the board of education should ask an employe how much of the foreign tuition had been received, but on the contrary the exact status should appear in the books of the clerk-treasurer at that time, and from these figures the tax rate for tuition purposes might be increased or lessened for the succeeding year. The manner of the ap-

portionment of school funds is set forth in Section 7603. This apportionment refers to all the moneys that are received by a school district and the closing sentence reads as follows:

“Moneys coming from sources not enumerated herein except for tuition of children of non-residents shall be placed in the contingent fund.”

This language is further strengthened by newly amended Section 7682, which now reads:

“Each board of education may admit other persons upon such terms or upon the payment of such tuition within the limitations of other sections of law as it prescribes. Notwithstanding the provisions of Section 7603, General Code, money received for tuition shall in all cases upon its receipt be placed in the tuition fund.”

Here we have a direct mandate that the tuition as soon as received by the receiving officer or agent of the board of education shall be placed in the tuition fund. The section does not say that a portion of such money shall be placed in the tuition fund or any fraction of it, or that it can be depleted in any way by paying a percentage to any person for the collecting of it, the provision being that the tuition received, that is, all the tuition, shall be placed in the tuition fund of the district. Under the provision of Section 284 G. C. the Bureau of Inspection and Supervision of Public Offices shall make an examination of school district offices at least once in every two years and inquiry shall be made “into the methods, accuracy and legality of the accounts, records, files and reports of the office,” and it is not the contemplation of the law that when the examiner desires to examine the books of the clerk-treasurer in a school district it will be necessary to send out for another school employe not under bond, and possibly not then in the district, to get the exact status of the tuition funds collected since the last official examination. If these collections are made by the clerk-treasurer, as the agent of the board of education, and placed immediately in the tuition fund of the district as an entity by the clerk-treasurer, then the examiners of the Bureau of Inspection and Supervision of Public Offices, or any other person, can find at once the exact status of each and every account, as to the amount paid, amount due and the disposition of the funds received.

For the law bearing upon the question of a servant or employe being interested in any contract of a board of education, see Section 12910 G. C. It might follow that if a percentage of the amount

of the tuition collected was paid to any one, there would be undue activity in attempting to bring to the district in question foreign pupils, thus militating possibly against the pupils resident in the district who are entitled in the first instance to the school facilities of the district, and a further result of operating against the success of schools in adjoining districts, which might become more or less depleted in membership if their own resident pupils were being urged to attend a certain other school. These, of course, are rare contingencies, but from a legal standpoint such conditions could obtain.

In reply to your inquiry, following the discussion above given, and considering prior opinions of this department and the sections of law cited as they now read, you are advised that it is the opinion of this department that:

(1) A board of education in fixing the salary of its superintendent of school may not fix such salary at a specified amount and provide that in addition thereto the superintendent shall receive a certain percentage of the foreign tuition collected, for the reason that such payment would not be a "fixed" salary as intended by Section 7690 of the General Code, and such superintendent is not a bonded employe of the district.

(2) The duty of receiving school funds is imposed upon the treasurer of the school district and under the provision of Section 7682 G. C. (109 O. L., 373) all money received for tuition from foreign districts shall in all cases, upon its receipt, be placed in the tuition fund.

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If a Park Policeman is to be Such as to be Empowered to Act in the Capacity of City Police Officers, He Must be Under the Control and Supervision of the Department of Public Safety.

No. 3139—(Opinion Dated May 25, 1922.)

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

Gentlemen: Receipt is acknowledged of your communication which reads as follows:

"On January 26th, 1903, the Attorney General held that police for park purposes should be under the control of the board of public safety the same as other police. Section 4061, G. C., provides that a board of park commissioners may employ a secretary, general superintendent, engineer, clerks and

such other necessary employees for carrying into effect the purposes of its creation, and shall fix the rate of its compensation and term of service of its employees.' This department is in receipt of an inquiry from the city auditor of Portsmouth, Ohio, as follows:

"In the November election the electors of the City of Portsmouth voted to create a park commission for the city.

The mayor has appointed a commission and the commission is duly organized.

Council has appropriated money for labor and material. Is it necessary for council to create the positions of policemen for the parks or, has the park commission authority to employ as many people as they see fit and pay them the salary they think necessary without being authorized by council?

An early reply will be appreciated as I am holding pay-rolls until I hear from the department.'

Question:

In view of the opinion and statute above quoted, would a board of park commissioners have authority to appoint park policemen under their own rules and regulations without authority of council or should such park policemen be a part of the police department of such city under the control of the director of public safety?

An early reply will be greatly appreciated."

Pertinent to the question submitted, Sections 4053 to 4065, G. C., inclusive, provide for the creation and organization of the board of park commissioners of a city, and vest in such boards when created, the control and management of the public parks of the city.

Relative to employees, Section 4061, G. C., authorizes the board to employ a secretary, general superintendent, engineer, clerks and such other necessary employees as may be deemed proper to effect the purposes of its creation. The section, it may be noted, does not confer any police power upon the board of park commissioners.

Upon reading, however, Section 4061, G. C., together with Section 4059, G. C., which provides for the enforcement of the rules and regulations adopted by said board of park commissioners, it may be inferred that such a board would be authorized to provide and compensate employees of its own choice to protect park property or to enforce the rules and regulations of said board relative to such public parks. It is thought, however, under such circumstances that by reason of any employment authorized, such employees could not be clothed with the powers of police

officers, for the obvious reason that such power is not in the first instance delegated by statute to the said board of park commissioners.

Under the authority of Section 3617, G. C., the power to organize and maintain the police and fire departments is delegated to the city council, while Section 4368, provides that under the direction of the mayor, the director of public safety shall be the executive head of these departments, and shall have all powers and duties connected with and incident to the appointment, regulation, and government of said police and fire departments. Section 4374, G. C., provides for the classification of the officers of the police department, while Section 4372, G. C., provides that such officers and employes, subject to the rules and regulations of the director of public safety shall be under the exclusive control of the chief of police.

In view then of the provisions of the General Code, it would seem obvious, that the office of a city policeman is wholly a matter of statutory provision which vests the police power in such matters in the city council and the department of public safety. Hence it is concluded in answer to your question, that if the "park policemen" contemplated by your inquiry are to be such as may be empowered to act in the capacity of city police officers, such policemen by reason of statutory requirement must be under the control and supervision of the department of public safety.

SUPREME COURT

SYLLABI OF REPORTED CASES

No. 17192—Clark T. McDonald v. The Pennsylvania Railroad Co. Error to the Court of Appeals of Allen County.

Jones, J.

In an action by a plaintiff employe against a railroad company for personal injuries sustained while engaged in interstate commerce, where the defendant has pleaded the defense of assumption of risk, a charge of the court defining such risk as accidents and misfortunes that are necessarily unforeseen and could not have been anticipated by the defendant, and which also confines that defense to such accidents and misfortunes, is erroneous and prejudicial.

Judgment affirmed.

Hough, Robinson and Matthias, JJ., concur.

No. 17237—Edward G. Whitmore, Admr. of the Estate of Mary Chrysler Deceased, v. The Industrial Commission of Ohio. Error to the Court of Appeals of Sandusky county.

Johnson, J.

1. Where the language of a statute will permit, such construction will be given as will keep in harmony with the letter and spirit of the constitution.

2. Where the industrial commission has denied the right of a claimant to participate at all in the insurance fund on any ground going to the basis of the claim, and the claimant has perfected an appeal to the court of common pleas in compliance with Section 43 of the Workmen's Compensation Act, the provisions of that section require that the cause shall proceed in that court in accordance with the rules of civil procedure, and either party is entitled to demand a trial by jury.

Judgment reversed.

Marshall, C. J., Hough, Wanamaker Robinson, Jones and Matthias, JJ., concur.

No. 17361—Thomas C. Devine v. The State, ex rel. Wm. H. Tucker, Jr. Error to the Court of Appeals of Lucas county.

Wanamaker, J.

1. An act of the general assembly will not be regarded as directory or discretionary as to those upon whom it is intended to operate, unless such directory or discretionary character clearly appears from the entire text of the act.

2. Section 5069 et seq., General Code, as to the marking of the ballot by the voter, are clearly mandatory in terms and intention, and should be substantially followed by the voters and the election of authorities.

Judgment reversed.

Johnson, Hough and Matthias, JJ., concur. Robinson, J., concurs in proposition 2 of the syllabus and in the judgment.

MOTION DOCKET

17486—Walter Jehn v. Kathlyn Wold. Motion for an order directing the Court of Appeals of Cuyahoga county to certify its record. Overruled.

17497—James H. Dunn et al. v. Jessie I. Westwood. Motion for an order directing the Court of Appeals of Trumbull county to certify its record. Overruled.

17508—V. W. Surber et al. v. William F. Martin et al. Motion for an order directing the Court of Appeals of Seneca county to certify its record. Overruled.

17511—Fred W. Almendinger v. Charles F. Moore. Motion for an order directing the Court of Appeals of Marion county to certify its record. Overruled.

17512—Richard B. Carran & Sons Co., v. The Bickett Machine & Mfg. Co. Motion for an order directing the Court of Appeals of Hamilton county to certify its record. Sustained.

17572—The Ohio Collieries Co., v. Elizabeth Cooke. Motion for an order directing the Court of Appeals of Perry county to certify its record. Sustained.

17587—Arthur H. Richards et al. v. Levi C. Goodale et al. Board of Trustees of The Cincinnati Southern Ry. et al. Motion for an order directing the Court of Appeals of Hamilton county to certify its record. Sustained.

17403—Jess L. Ford, Admr., v. The C., C. & St. L. Ry Co. Motion for an order directing the Court of Appeals of Lorain county to certify its record. Sustained.

17462—George C. Pracht et al. v. Lola Shoemaker. Motion for an order directing the Court of Appeals of Allen county to certify its record. Overruled.

17500—Henry Marks v. W. E. Hutton et al. Motion for an order directing the Court of Appeals of Hamilton county to certify its record. Overruled.

17501—The Dueber Heights Coal Co. v. Walker P. Hines, Director General, et al. Motion for an order directing the Court of Appeals of Stark county to certify its record. Overruled.

17502—Mary J. V. Patric, Evtrx. v. al. v. Hazel V. Trull. Motion for an order directing the Court of Appeals of Clark county to certify its record. Overruled.

17506—The Otis Steel Co. v. The

Cleveland Tanning Co. Motion for an order directing the Court of Appeals of Cuyahoga county to certify its record. Overruled.

17551—Walter W. Weel v. State of Ohio. Motion for leave to file petition in error to the Court of Appeals of Cuyahoga county. Overruled.

GENERAL DOCKET

17192—Clark T. McDonald v. The Pennsylvania Rd. Co. Allen. Judgment affirmed.

17237 — Edward G. Whitmore, Admr. v. The Industrial Commission of Ohio. Sandusky. Judgment reversed.

17361—Thomas C. Devine v. The State, ex rel. William H. Tucker, Jr. Lucas. Judgment reversed.

17510—City of Springfield, by Robert W. Flack, iCity Solicitor v. The Public Utilities Commission et al. Public utilities Commission. Petition in error withdrawn by agreement of parties. Costs paid.

16436—The State, ex rel. John G. Price, Atty. Genl., v. Louis J. Huwe, Treas., et al. In mandamus. Demurrer to answer sustained.

17271—The Cincinnati Union Depot & Terminal Co., v. City of Cincinnati. Hamilton. Judgment reversed.

17471—The State, ex rel. Clarence L. Chute, v. Carrington T. Marshall, Chief Justice of the Supreme Court of Ohio. In mandamus. Writ denied.

SECRETARY OF STATE

NEW CORPORATIONS

The Louis Hester Co., \$50,000, Cincinnati. Louis Heister, Harry J. Tischbein, Louis Tischbein, Jr., L. H. Heister, Jr., George Hoodly.

The Ohio Somerset Oil Co., Cleveland, \$50,000. M. A. Fraser, B. R. Abramson, James J. McCarthy, Jas. A. Lavelle, Walter J. Welsh.

The E. S. Gahagen Co., Cincinnati, \$150,000. E. S. Gahagen, R. C. Sackett, Clarence M. Smith, Charles M. Leslie, Dorothy M. Bernard.

The Excell Letter Co., Cleveland, \$10,000. E. Howell King, Edwin J. Marte, M. W. Vickery, Mary B. King, Treeva E. Marte.

The Metropolitan Savings & Loan Co., Youngstown, \$200,000. J. J. Brant, Will B. Jones, John P. Barrett, H. H. Wickham, A. M. Henderson.

The McPeck & Perrill Co., Dayton, \$10,000. C. E. Perrill, C. E. McPeck, S. Thomas, G. L. Sutton, Robert R. Wilson.

The Byerplyte Co., Cleveland, \$18,000. A. E. Goldhamer, M. Walters, S. D. Heller, W. H. Hasselman, Jas. M. McSweeney.

The Gannett Motor Co., Cleveland, \$30,000. E. E. McCloud, L. T. Taylor, J. G. Wendland, Henry Schott, F. W. Eichenberg.

The Clearway Electrical Construction Co., Canton, \$10,000. Louis C. Stark, J. Harry Roe, Marshall K. Smith, William F. Stark, J. E. Rebillet.

The Ashfield Development Co., Mansfield, \$10,000. D. W. Foley, Jas. A. Strock, Hermon Homberger, Chas. J. Roth, Ida M. Cripe.

The Chocolate Cone Sundae Co., Columbus, \$1,000. George C. Urlin, N. S. Ridgeway, J. E. Matthews, G. T. Griffiths, B. Becht.

The Greenwald Coal Co., Toledo, \$5,000. James A. Greenwald, Edna S. Greenwald, Curtis T. Johnson, Ben W. Johnson, Leo Steinem.

The Surety Investing Co., Cleveland, \$500. Charles C. Follett, Orville Smith, Walker H. Nye, John W. Eckelberry, Fred J. Perkins.

The Lincoln Lithographing Co., Cincinnati, \$10,000. A. Ehermantraut, E. F. Eversman, August J. Knapp, Walter T. Eversman, M. J. Taube.

The Jewell & Horne Construction Co., Cincinnati, \$25,000. John A. Jewell, Herbert E. Ritchie, Elmer R. Horne, Fred Weiland, Edwards Ritchie.

The Higgy-Avery Co., Columbus, \$20,000. Herbert Higgy, F. E. Avery, Clinton E. Higgy, H. A. Miller, Jos. P. Eagleson.

The Coulter Restaurant Co., Columbus, \$10,000. L. C. Coulter, R. McMurray, F. E. Kaderly, E. Hauck, H. H. Orr, F. E. Kaderly.

The H. S. Haslett Co., Columbus, \$30,000. H. S. Haslett, A. J. Haslett, J. J. Haslett, John Pepper, Dr. J. R. Haslett.

The Wireless Engineering Co., Cleveland, \$5,000. Charles O. Grace, Barton L. Hunt, Clarence E. Jones, Harry N. Blair, W. B. Hunt.

The Shelby Ice & Fuel Co., Shelby, \$500. George P. Koch, S. E. Kuhn, Newell M. Price, C. J. Anderson, Jas. V. Will.

The Ohio Expert Auto Radiator Co., Cincinnati, \$150,000. Vita Habib, Leon Benmayer, Simeon H. Hurltig, Fred Bossemeyer, H. E. Heitz.

The Standard Marble Works Co., Cincinnati, \$250,000. John M. Mueller, John Stacey Mieller, Charles J. Boeh, Gilbert Bettman, Nelson J. Cohen.

The Independent Clay Co., Columbus, \$500. Charles H. Lahr, James T. Sweeney, S. S. Murdock, W. G. Murray, R. H. Russell.

The Everite Electric Mfg. Co., Dayton, \$10,000. Joseph A. Wortman, Oscar W. Wortman, Frank H. Johnston, Thomas E. Klein, Dickson S. Gunckle.

The 7829 Euclid Co., Cleveland, \$500. Quay H. Findley, Edward C. Daoust, C. A. Alexander, Trafion M. Dye, K. T. Siddall.

The Radebaugh Strow Co., Cleveland, \$1,000. R. E. Radebaugh, Walter E. Strow, William L. David, N. J. Webster, C. M. Burke.

The Zo-Mu Syrup and Beverage Co., Cincinnati, \$100,000. Charles W. Potter, Walter E. Karns, Herbert A. Silver, Charles S. Fisher, Albert D. Fisher.

The Cleveland Real Estate Investment Co., Mentor Special District, \$1,000,000. R. Siscoe, Harry C. Hyatt, W. W. Chase, Frank Spitz, C. O. Frick.

The Robin-Hill Pharmacy Co., Cleveland, \$10,000. Sam B. Fitzsimmons, M. L. Lillis, L. S. Klein, H. C. Boyd, G. F. Pontius.

The Mountain Valley Water Co., Cleveland, \$50,000. Clark T. McConnell, Ralph W. Sanborn, M. Kubik, Charles T. Rich.

The Charles W. Breneman Co., Cincinnati, \$1,000,000. Charles W. Breneman, H. Campbell Breneman, D. Lockwood Bobb, Joseph W. Stratman, Joseph W. Stratman.

The Wellington Savings & Loan Co., Wellington, \$500,000. B. D. Nowling, Gerald H. Steele, W. J. Hullett, C. W. Sarver, C. K. Murray.

The Hehle Mfg. Co., Cincinnati, \$25,000. Boniface Hehle, Clarence Alfred Baiter, F. William Hauck, Emil A. Hauck, Eva M. Beller.

The S. A. Medalie Co., Cleveland, \$20,000. Frank G. Mooney, Ira J. Warner, O. E. Shaw, S. L. Waxman, I. L. Nichols.

The State Realty Co., Cleveland, \$5,000. Julius Bloomberg, Eugene E. Wolf, M. G. Sloss, H. M. Wikisal, K. F. Litman.

The Maxton R. Davies Co., Cleveland, \$10,000. Maxton R. Davies, E. G. Davies, C. G. Hill, John A. Lombard, A. R. Johnson.

The Woodward-Republic Construction Co., Cleveland, \$30,000. H. W. Caldwell, Jr., Wm. H. Thomas, R. P. Abbey, Helen L. Scanlon, Raymond J. Logan.

The Chesapeake and Lawrence County Telephone Co., Chesapeake, \$20,000. A. C. Singers, Ona May Singers, H. H. Ball, E. N. Garland, R. F. Singers.

The Allen Sign Co., Toledo, \$5,000. Virgil M. Allen, Percy R. Kreuzer, John E. Steele, Percy F. Parrott, Mildred Shearer.

The Donnelly Sales Corporation Co., Cleveland, \$500. D. B. Donnelly, E. H. Krueger, F. H. Sellberg, G. M. Roth, L. J. Krueger.

The Marion Curtain Rod Co., Ma-

tion, \$20,000. Howard A. Tonguett, George H. Spragg, Nute H. Spragg, Thomas DeMar, Max F. Cowan.

The Ohio Surgical Supply Co., Cleveland, \$500. Waldo B. Lemmon, Alfred E. Dixon, Allen W. Burger, Guy M. Wells, Edward C. Dixon.

The Fipatlin Co., Cincinnati, \$500. Rolla L. Shickner, H. J. Schwer, Herman H. Schrader, W. S. Patterson, Victor S. Fishwick.

The W. T. White & Co., Cleveland, \$500. W. T. White, H. P. Jaeger, A. W. White, Charles F. Stearns, Joseph E. Gavin.

The Wolf Mercantile Co., Cleveland, \$2500. Rosa Wolf, Morris Wolf, Bertha Solomon, Albert Solomon, S. I. Powell.

The Underwood Furnace Gas Producer Co., Dayton, \$5,000. C. P. Folsom, A. V. Howell, J. T. Underwood, J. B. Collidge, L. M. Underwood.

The Cole Professional Building Co., Akron, \$300,000. John M. McGowan, Arthur W. Kennedy, John Bryant Cattran, Fred H. Steffens, David Lesley.

The LaDarr Oil & Gas Co., Hamilton, \$100,000. F. J. J. Sloat, P. Benninghofen, Alexander Thomson, Bertrand B. Kahn, John S. Spoerl, C. Benninghofen.

The Broadview Building Co., Cleveland, \$10,000. Morris Aron, Meyer Atkin, Mayer B. Kahn, Maurice H. Gelfand, Henrietta Bollotin.

The Cleveland Candy Co., Cleveland, \$500. Harold G. Mosier, John Pearson, D. A. Christopher, E. M. Day, Carl Dautel.

The Paramount Securities Co., Columbus, \$500. George W. Fippin, Irene Wells, Fred Fuller, Henry Metcalf, Chester L. Kelly.

The Miami County Live Stock Co., Troy, \$4,000. Sumner Senseman, A. B. Fessler, H. S. Woodmancy, Lester J. Morrow, W. R. Walker.

The Troy-Model Laundry Co., Fremont, \$50,000. V. F. Tobias, Ora A. Tobias, C. C. Tunnington, Charles A. Heim, F. M. Tunnington.

The State Exchange Bank, Stryker, \$25,000. Edward F. Johnson, Edmund Piper, Walter L. Stubbs, William Thurot, Victor J. Silliman, Rose B. Bruns.

The Johnson-Erickson Co., Ashtabula, \$10,000. E. Erickson, W. M. Johnson, C. F. Erickson, E. K. Erickson, L. Johnson.

The Medina Aviation Club Co., Medina, \$5,000. H. R. Calvert, J. A. Ray, A. B. Pritchard, W. P. Goembel, W. B. Alderfer.

The St. Clair Auto Sales Co., Cleveland, \$10,000. Albert Mendelson, John C. Breidenbach, J. K. Klein, N. Feigenbaum, Robert Granger.

The Radio Supply Co., Cleveland, \$25,000. John P. Megroot, Antonette M. Kopp, Harry A. Gillis, F. L. Waggoner, L. S. Lomasson.

The Sterns Luburetor Co., Columbus, \$10,000. William H. Bone, Chas. H. Neil, Herbert B. Halliday, Hugh Bone, Sherman B. Randall.

The New Lyceum Amusement Co., Dayton, \$10,000. M. Weiss, H. Frankel, Jonney Jones, L. M. Levinson, Wm. May.

The Harrison & Son Printing Co., Cleveland, \$20,000. Edgar J. Harrison, L. H. Harrison, C. T. Baird, C. Thompson Crane, Martin J. Hoosan.

The Raysho Co., Cleveland, \$500. C. A. Alexander, Quay H. Findlay, Trafton M. Dye, R. L. Haverick, I. M. McDonough.

The George McKeever Co., Columbus, \$25,000. George McKeever, T. S. Wolfe, S. P. Outhwaite, Carl Tresemer, P. Cozad.

The Dayton Veneer Co., Dayton, \$150,000. J. W. Frye, A. E. Snyder, S. C. Brown, J. E. Harris, E. D. Fuls.

The Hilltop Building and Loan Association, Columbus, \$200,000. W. J. Jones, J. W. Dinsmore, D. H. Elliott, Ezra Hill, William J. Jones, J. W. Worrell, F. W. Postle.

The Ohio Pumping Machinery Co., Akron, \$100,000. Huntlie Gordon, Roy C. Witmer, Dow W. Harter, Chas. C. Benner, Elanore Carney.

The P. and A. Electric Supply Co., Mansfield, \$75,000. O. E. Townsend, F. C. Poling, T. R. Barnes, O. P. Anderson, V. B. Poling, O. A. Anthony.

The Vaco Washer Co., Lynchburg, \$1,000. E. O. Hayes, H. S. Pulse, J. T. Gibson, F. L. McDaniel, C. R. Simkins.

The Queen Oil Co., Bowling Green, \$10,000. Charlie A. Wack, Floyd T. Sweet, Clarence W. Underwood, Earl Fletcher, Fred Munn.

The Dundas Casket Co., Dundas, \$75,000. W. C. Trainer, Charles E. Lee, Murray Barstow, J. J. Dawson, Stephen Salts.

The Toledo & Indiana Building Co., Toledo, \$40,000. H. W. Potter, Chas.

F. Chapman, Randolph P. Whitehead, Donald A. Finkbeiner, Frank A. Harrington.

The H. R. Shipman Realty Co., Toledo, \$1,000. H. R. Shipman, W. D. Skransewky, Hy Davis, Mrs. W. D. Skransewky, Herald D. Bowlus.

The J. P. Realty Co., Cincinnati, \$20,000. J. Rappoport, R. A. Rappoport, M. J. Rappoport, L. G. Rappoport, Edward Bernard.

The Cities Amusement Co., Springfield, \$20,000. Henry Hill, M. J. Fisher, Orrie M. Eulitt, Percy H. Rosenfeld, Justin Altschul, Lewis L. Miller.

The Wilderness Club Co., Akron, \$500. F. C. Stanert, F. A. Dole, John M. Renner, G. W. Mathaney, S. Bernard Berk.

The Select Advertising Service Co., Cincinnati, \$10,000. J. E. Stiretelmeier, Edward C. Stiretelmeier, Lawrence J. Funks, E. Earl Kirkpatrick, A. P. Foster.

The American Sign Co., Cincinnati, \$1,000. Gus Reininger, Harold Christopher, Amos P. Foster, James Anderson, Albert Jetter.

The Harruff, Patton & Harruff Coal Co., Marion, \$100,000. Frank J. Harruff, J. B. Patton, Perry L. Harruff, S. H. DeLong, Sam I. Bolinger, D. E. Kirts.

The Electric Auto-Lite Co., Toledo, \$500. Thomas H. Tracy, G. D. Welles, Frank M. Cobourn, Paul T. Phillips, Seavey E. C. Moor.

The Pershing Realty Co., E. Cleveland, \$10,000. G. W. Hofrichter, T. A. Barco, M. A. Munn, A. G. Cutler, H. W. House.

The Nicoll the Tailor Co., Cleveland, \$5,000. Alfred A. Benesch, E. P. Schlosser, M. L. Harrington, G. A. Davis, C. W. Gallagher.

The Autoist Defendant Service Co., Cleveland, \$5,000. Charles B. Stone, Morris Davidson, Frank Davidson, Donald Davidson, Mrs. C. B. Stone.

The Walter M. Scott Publishing Co., Cleveland, \$10,000. Walter M. Scott, R. A. Gordon, A. E. Tresise, Frank H. Pelton, R. L. Davis.

The Postal Savings & Loan Co., Cleveland, \$10,000,000. John A. Elden, J. H. Ross, H. A. Salzer, Walter A. Woods, J. A. Dubois.

The C. Leist Bros. Co., Steubenville, \$1,000. Frank Floto, Henry A. Liest, William H. Leist, Mrs. Helen Marie Leist, Helen Leist.

The M. D. Kodish Realty Co., Akron, \$10,000. Sam Salzman, J. C. Maytnier, Morris Kodish, A. B. Underwood, E. M. Hutchison.

The Center Ladies Tailoring Co., Cleveland, \$6,000. Nathan Fridrich, C. D. Fridrich, Harry Sherman, Gussie Sherman, Reuben Bonda.

The Star Shoe Repairing Co., Cleveland, \$25,000. Joseph Drost, Meyer Drost, William Drost, A. D. Glora, Sol Edgert.

The Dornette Motor Car Co., Cincinnati, \$25,000. John Dornette, Jr., Millie Dornette, C. H. Dornette, J. W. Dornette, W. D. Stanton.

The Lewis Wills Sainte Claire Co., Youngstown, \$500. C. J. Lewis, M. L. King, D. F. Kennedy, L. M. Montgomery, H. L. Pudrith.

The Engineers Service Corp. Co., Cleveland, \$500. J. H. Smart, C. B. Ford, W. T. Bishop, Geo. Wyman, P. W. Studer.

The National Exploitation Co., Cleveland, \$10,000. Walter Storey, W. J. Benedict, W. G. Whitehouse, Alfred Richley, G. W. Snow.

The R. A. Stilwell Co., Cleveland, \$10,000. A. S. Haskell, C. M. Malloy, C. V. Liggett, Wm. D. Guion, T. C. Moore.

The National Battery Co., Toledo, \$10,000. J. E. Eckel, G. D. Mather, Paul Chizmer, Harold Garn, Louis Hubay.

The Old Town Realty Co., Toledo, \$10,000. H. P. Whitney, E. M. Beard, Louise Whitney, Alice Wagner, Luella Ahrendt.

The Purchasers Realty Co., Cleveland, \$5,000. H. C. Boyd, W. A. McIlwrath, W. R. Bustard, W. A. Moran, Louise Kline.

The J. J. Masterson Co., Cleveland, \$50,000. J. J. Masterson, P. J. Mulligan, John P. Kalina, J. J. Babka.

The White Eagle Svgs. & Loan Assn., Cleveland, \$100,000. K. G. Cieslak, J. J. Matusik, J. Kadzielski, W. J. Brudzynski, S. A. Titus.

The Hinckley Investment Co., Hinckley, \$10,000. R. E. Hyre, R. C. Hyre, W. J. Davis, Gabrielle W. Hyre, M. J. Walther.

The Ohio Trust Co., Cleveland, \$1,000,000. W. T. Redmond, R. H. McQuat, G. H. Eichelberger, J. M. McSweeney, W. K. Gardner.

The Lima Dress Mfg. Co., Lima, \$5,000. A. Levine, Maurice Bershey, J. W. Roby, W. S. Jackson, H. I. Bland.

The International Grocery Co., Dayton, \$20,000. J. C. Sipkar, M. K. Mackevich, Geo. Mihalkn, Mito Stansevich, Michael Zaiga.

The Tovan Electric Co., Norwood, \$10,000. C. P. Brueckner, Wm. Mittendorf, Sr., Wm. Mittendorf, Jr., S. M. Thomas, A. A. Van Pelt.

The Lang Battery Co., Cleveland, \$2,500. W. J. Laeng, Arthur Naftzger, C. J. Titgemeir, F. B. Stearns, A. B. Stearns.

The Piggly-Wiggly-Akron Co., Akron, \$500. S. H. McDonald, H. F. Lowry, M. E. Greeley, G. L. Hamilton, R. R. Hamilton.

The Southern Theatre Co., Cincinnati, \$10,000. I. Lisbon, B. L. Heidengefeld, Sigmund Rheinstrom, E. J. Babbitt, A. B. Chisholm.

The Clinton Realty & Loan Co., Wilmington, \$20,000. W. A. Starbuck, E. E. Haines, Elijah Van Pelt, W. I. Stewart, M. S. Tener.

The Jos. H. Homan Metal Co., Cincinnati, \$25,000. J. H. Homan, H. J. Homan, L. E. Daly, G. A. Daly, E. L. Conway.

The Kinsman Feed & Supply Co., Kinsman, \$800. C. A. Hobart, Fay P. Root, H. A. Sisley, A. G. Birrell, H. J. Fobes.

The Mt. Vernon Sand & Gravel Co., Mt. Vernon, \$50,000. R. M. Lamb, W. J. Sperry, G. R. Smith, M. S. Lewis, F. J. Martin, F. W. Kahrl.

The Mellocakes Co., Columbus, \$10,000. W. S. Crater, F. C. Dunbar, W. C. Newton, C. L. Logan, O. G. Munn.

The Cleveland-Youngstown Bus Co., Cleveland, \$50,000. F. G. Grieger, H. E. Wicks, P. D. Caldwell, C. E. Mahon, M. L. Higgins.

The DiPaola Bldg. and Improvement Co., Cleveland, \$2,500. A. L. Dietz, Santo Di Paola, M. Krejci, S. I. Powell, A. T. Miller.

The Kansas Light & Power Co., Kansas, \$10,000. J. P. Seager, L. Jones, F. Shaul, D. F. Cookson, E. Copsey, J. Schoendorff, C. Seager, G. R. Weeks.

The Riverside Park Co., Uhrichsville, \$25,000. H. H. Treadway, B. C. Treadway, J. R. Matson, Esther Matson, G. W. Reed.

The Home Realty Co., Massollin, \$10,000. C. F. Beiner, F. F. Reinoehl, P. A. Kuhn, W. E. N. Hemperly, W. E. Brentzel.

The A. Fricker Mfg. Co., Cleveland, \$10,000. W. R. Godfrey, J. Kohrman, E. Holat, M. W. Spear, J. A. Boylan.

The Roxana Tire & Rubber Co., Akron, \$10,000. J. E. McCormack, C. W. Justice, G. D. Moore, W. B. Trospen, E. W. Baker.

The Ganford Co., Akron, \$10,000. F. W. Canyard, E. M. Crawford, H. W. Schwab, E. N. Heiser, G. M. Felton.

The Ohio Electric Cleaner Co., Dayton, \$5,000. A. A. Serva, C. J. Adams, R. J. Bour, Jr., M. L. McCann, R. N. Howell.

The Amalgamated Metals & Machine Co., Cleveland, \$10,000. H. M. Stainfield, Allen Diemer, Melville W. Vickery, R. M. Ewing.

The White Eagle Oil Co., Cleveland, \$30,000. A. J. Lukwinski, W. E. Matthiat's, Joseph Kopczynski, Mary Lukwinski, Arthur Lukwinski.

The A. E. Reeg Co., Portsmouth, \$25,000. A. E. Reeg, E. K. Eckhart, W. B. Hitchcock, B. E. Reeg, E. G. Millar.

The Co-operative Finance Co., Cleveland, \$25,000. J. Levine, J. A. Fenner, J. E. Potts, A. M. Loveland, L. B. Casselle.

The Garfield Park Overlook Subdivision Co., Cleveland, \$60,000. Bertha Kramer, Elizabeth Holstein, John D'Angelo, J. F. Bontempo, Herman Spielberg.

The T. & F. Organization Co., Cleveland, \$5,000. Alfred Safran, J. Nuccio, P. DeLorenzo, Bertha Kramer, Elizabeth Holstein.

The Brilliant Handle Co., Brilliant, \$5,000. Elbridge Kehr, Robert Brogan, J. M. Parsons, W. K. Rodgers, G. H. Hathaway.

The Marko Sales Co., Dayton, \$25,000. Louis Marko, Frank Bulla, Frank Mecsik, John Ribarin, John Petrocy.

The L. S. Green Improvement Co., Cleveland, \$500. L. S. Green, A. E. Brueckner, N. H. Hoffmeister, W. B. Lemmon, L. G. Collister.

The East Tuscarawas Market Co., Canton, \$60,000. J. Gersten, P. E. McAllister, E. A. McCusky, Aaron Adler, R. O. Robertson.

The Falls Buick Co., Cuyahoga Falls, \$20,000. W. C. Young, F. E. Johnson, E. F. Lienhard, T. L. Dickinson, W. E. McCormick.

The Hocking Valley Coal and Oil Co., Bellefontaine, \$500. J. M. Hamilton, R. S. King, J. W. Rice, H. E. Talnot, Jr., J. M. Huffman, H. M. Huffman.

The Englewood Constr. Co., Englewood, \$30,000. L. S. Hoke, R. Byes, G. W. Hoke, R. L. Clark, J. C. Cassel.

The Stenpho Co., Dayton, \$15,000. C. C. Cosner, Earl H. Cosner, Ed. Hageman, Kennedy Legler, E. P. Legler.

The Fidelity Service & Adjustment Co., Dayton, \$500. H. W. Pleasant, Henry Doench, Ellwood C. Baver, P. ackerman, E. L. McCleary.

The Million Dollar Chemical Co., Cleveland, \$50,000. S. N. Weitz, J. H. Crowley, W. F. Waldeisen, A. D. Dennison, M. L. Desenberg.

The F. H. L. Realty Co., Cleveland, \$1,000. S. B. Fitzsimmons, M. L. Lillis, C. F. Moran, E. M. Lillis, H. C. Boyd.

The Lyric Producing Co., Greenville, \$500. J. D. Deardorff, H. A. Deardorff, Elmer Mong, F. F. Rote, Nora Rheiner.

The Dunn-Jackson Motors Co., Ellyria, \$25,000. O. G. Dunn, R. E. Jackson, C. E. Dunn, M. J. Jackson, D. W. Myers.

The Sanitary Caramel Co., E. Liverpool, \$20,000. Mike Karror, John Englis, W. S. Foulks, Thomas Brown, G. H. Cochrane, Jr.

The Dexter Mfg. Co., Gallipolis, \$10,000. H. W. Dexter, Frank Baker, John Clendenin, Thomas Bealle, L. E. Worman.

The Wright Mfg. Co., Cincinnati, \$5,000. T. B. Wright, C. M. Jacobs, Jr., H. G. Frost, Dudley M. Outcalt, Alexander Richards.

The Miami Valley Transit Co., Norwood, \$25,000. M. F. Jackson, W. H. Burtner, Jr., W. H. Hannen, R. Black, Ruth Harris.

Increases

The Cleveland Talking Machine Co., \$150,000 to \$350,000.

The Clayton C. Townes Co., Cleveland, 1,000 to 2,000 shares no par value.

The Merchants Vehicle Co., Columbus, 25 to 125 shares no par value.

The H. Clauss Co., Fremont, \$10,000 to \$4,000.

The Case Fish Co., Cleveland, \$53,000 to \$75,000.

The Inland Coal & Dock Co., Cleveland, 7,000 to 10,000 shares no par value.

Decrease

The Kawaton Land Co., Cleveland, \$40,000 to \$4,000.

ATTORNEY GENERAL

A County Board of Education Cannot Purchase, Operate and Maintain a Moving Picture Machine Under Authority of Sections 7622-4 and 7622-7 of the General Code.

N. 3115—(Opinion Dated May 18, 1922.)

Hon. J. F. Vandenbrook, Prosecuting Attorney, Napoleon, Ohio.

Dear Sir: Acknowledgment is made of the receipt of your request for an opinion upon the following:

"Section 7622-4 reads as follows: 'Supervision and conduct of social and recreational work. Upon the nomination of the superintendent of any school district the board of education of such district may employ a person or persons to supervise, organize, direct and conduct social and recreational work in such school district. The board of education may employ competent persons to deliver lectures, or give instruction on any educational subject, and provide for the further education of adult persons in the community.'

"Section 7622-7 reads as follows: 'Tax levy for social center fund. The board of education of any school district or a municipality may levy annually upon the taxable property of such school district or municipality within the limitations of Section 5649-2 of the General Code, not to exceed two-tenths of a mill for a social center fund to be used for social and recreational purposes.'

"It is the desire of the county board of education to give instructive meetings and in the instructive meetings it will be necessary to have a moving picture machine to further them with their lectures.

"Query: Does the expenditures relative to the obtaining and using the aforesaid moving picture machine come under recreational and social work as designated in the aforesaid mentioned sections?"

Your inquiry is upon the question as to whether the county board of education may use Sections 7622-4 and 7622-7 G. C. for the purpose of giving instructive meetings and whether the obtaining and maintaining of a motion picture machine by either or both of these two sections quoted in your inquiry.

Bearing upon the authority of a board of education, your attention is invited to the opinion handed down by the Supreme Court

of this state under date of November 22, 1921, in the case of Clark v. Cook, the second branch of the syllabus reading as follows:

"2. Boards of education and other similar governmental bodies are limited in the exercise of their powers to such as are clearly and distinctly granted. (State ex rel. Locher, Prosecuting Attorney, v. Meuning, 95 O. S., 97, approved and followed.)

As to the power of a county board of education, it was held as follows in the case of Mathews v. Board of Education as decided by

"A county board of education is a creature of statute and the powers granted to it are limited to those expressly given and those contained by reasonable intendment in the act creating it."

The sections which you quote in your inquiry, viz., 7622-4 and 7622-7 G. C., appear in House Bill 549, being an act "to repeal Sections 2457-1 and 2457-2, and to supplement Sections 7622-1 to 7622-7 inclusive providing for the use of school buildings and other public buildings and grounds for educational and recreational purposes. In the title of House Bill 549 (106 O. L., p. 552) it will be noted that the legislation was for the purpose of providing "for the use of school buildings and other public buildings and grounds" and it is thus apparent that the language appearing in the various sections in House Bill 549 was intended to refer to those boards of education which had control of school buildings. It is a matter of common knowledge that the county board of education does not have control of any school buildings or other public buildings, since their own office is furnished to them by the board of county commissioners. The only circumstance under which a county board of education would have control of a school building would be where the county board of education was operating the schools of a particular district in accordance with Section 7610-1 G. C., that, is, where the local board of education had been derelict in the performance of its duty and it became necessary for the county board of education to carry on the school activities required by law in the district. As a further indication that House Bill 549 had no reference to the county board of education, examination shows that House Bill 549, relative to the use of school buildings, went into effect just about one year after the establishment of the county board of education in the Ohio School Code of 1914. House Bill 549, containing the sections which you quote, was filed in the office of the secretary of state on June 5, 1915. House Bill 549 must

be read as an entirety and such reading should be had in conjunction with Section 7622 G. C., 91 O. L., 44, because the seven sections composing H. B. 549 are "to supplement Section 7622." Section 7622 G. C., which has been in force for a long time, provides that:

"When, in the judgment of a board of education, it will be for the advantage of the children residing in any school district to hold literary societies, school exhibitions, singing schools, religious exercises, select or normal schools, the board of education shall authorize the opening of the school-houses for such purposes. The board of education of a school district in its discretion may authorize the opening of such school-houses for any other lawful purposes. But nothing herein shall authorize a board of education to rent or lease a school-house when such rental or lease in any wise interferes with the public schools in such district, or for any purpose other than is authorized in this chapter."

A careful reading of Section 7622, *supra*, enacted as it was at a time long prior to the establishment of county boards of education, indicates that the board of education referred to in 7622 is the board of education in a local school district which has control of local school houses and has the power to rent or lease its own property for certain purposes. The county board of education has no title under existing law in any of the school houses in a county school district, the control of the latter being left entirely with local boards of education.

Following Section 7622 in the General Code now appears Sections 7622-1, 7622-2, 7622-3, 7622-4, 7622-5, 7622-6 and 7622-7. These latter supplemental sections constitute the whole of House Bill 549 (106 O. L., 552). At the time of the enactment of H. B. 549 in 1915, no provisions had been made by the general assembly for any county board of education fund with which to carry on the activities known as education and recreational purposes appearing in the act, nor was any authority granted by the general assembly to the county board of education to levy a tax upon the property in the county school district for recreational purposes or for any other purpose, and unless such authority has been clearly given to the county board of education by the general assembly, under the recent court decisions appearing at the beginning of this opinion, the county board of education would be wholly lacking in authority in cases of this kind. The only educational meetings that may be conducted by the county board of education are those

mentioned in 4744-3a (107 O. L., p. 622), which reads in part as follows:

"The county board of education is authorized to pay the expenses of its educational meetings required by law."

Bearing upon Section 4744-3a, it was held in opinion 266, issued by this department May 9, 1919, appearing at page 464, Vol. 1, Opinions of the Attorney General for 1919, that "educational meetings arranged by the school authorities voluntarily at various times would not come within those required by law."

If it were desired to organize and maintain civic and social centers throughout the county, there is another law bearing upon this subject, for Section 2457-3 G. C., (103 O. L., 830) reads:

"Boards of county commissioners shall be and are hereby authorized at their discretion to provide for the organization and maintenance of civic and social centers throughout the county, to employ an expert director who shall superintend and administer the same, and to levy a tax and create a fund for the payment of all expenses involved in the social, and educational work contemplated in this act; provided, however, that any municipality carrying on similar work shall, at the option of the city council or other governing body, be exempt from the operation of this act. The board of county commissioners at their option may, or, upon petition of ten per cent. of the qualified school electors of the county, shall refer the question of providing for this social, educational and recreational work to a vote of the aforesaid electors of the county or of such portions of the same as are affected by this act."

For an opinion of this department on the question of the county commissioners establishing a social center, and providing for the maintenance of the same, see opinion 532, appearing at page 1396, Vol. 2, Opinions of the Attorney General for 1913. It is thus apparent that the general assembly, in enacting House Bill 549, 106 O. L., 552, from which you quote supplemental Sections 7622-4 and 7622-7, had in mind those boards of education which have control of school buildings and their proper use and did not have in mind the county board of education established shortly before. This view is further augmented by the fact that provision had already been made in Section 2457-3 (103 O. L., 830). Several years before for the organization and maintenance of civic and social centers throughout the county by the board of county commissioners, who have authority to levy taxes, and thus there was no occasion for a duplication of this county activity by the county board of education, and in none of the laws enacted since that time

has authority been given to the county board of education to establish social and recreational work from a county standpoint or levy taxes for such purpose, and you are therefore advised that Sections 7622-4 and 7622-7, supplemental sections appearing in House Bill 549 (106 O. L., 552) have no references to the county board of education, but the sections refer to those local boards of education which have control of the use of school buildings. This being true as to general expenditures, it is at once apparent that the county board of education could not purchase, operate and maintain a moving picture machine under authority of Sections 7622-4 and 7622-7 of the General Code.

✱

Where a Parcel of Land Constituting Part of a Tract Dedicated to Public Park Purposes by Section 469 General Code, Has Been Leased for Agricultural Purposes Under Favor of Sections 471 General Code and 13965, et seq., Appendix General Code, and Such Lease Contains a Clause Permitting Cancellation by the State Upon Ninety Days' Notice That the Parcel is Required for Allotment Purposes, the State is Authorized, Through Its Department of Highways and Public Works, to Terminate the Lease for the Purpose of Making an Allotment of Such Parcel and Leasing the Lots to Various Councils of the Boy Scouts of America.

No. 3068—(Opinion Dated May 8, 1922.)

Department of Highways and Public Works, Division of Public Works, Columbus, Ohio.

Gentlemen: You have recently submitted for the consideration of this department a statement and inquiry as follows:

"This department granted a lease for agricultural purposes for certain lands on the south shore of Lake St. Marys to B. Romer, et al. on the 30th day of April, 1919, and said leasehold was subsequently transferred to The Reichert Food Products Company of Dayton, Ohio, which transfer was duly approved by the Superintendent of Public Works. We are informed that later this leasehold was acquired by Mrs. Joseph Reichert, but no transfer was ever presented to the Superintendent of Public Works for approval.

This department has an application from the Lima Council of the Boy Scouts of America to acquire this land as a permanent park or camp site for the use of the Boy Scouts of Northwestern Ohio. The granting of this permission will

be contingent upon your interpretation of the following restriction in the lease:

"The party of the first part hereto hereby reserves the right to cancel this lease, after ninety days notice, whenever the same is required for park or allotment purposes by the State of Ohio."

A copy of the lease is enclosed. Kindly advise us whether we can legally annul this lease for the purpose above stated."

The following statutes are pertinent to a consideration of your inquiry:

"Sec. 469. * * * the body of water and adjacent lands owned by the state in the county of Mercer known as the Lake St. Mary's * * * are hereby dedicated and set apart forever for the use of the public, as public park or pleasure resorts. * * *"

"Sec. 470. The lakes named in the preceding section shall at all times, be open to the public as resorts for recreation and pleasure, including hunting, fishing and boating, but the privileges of hunting and fishing shall be subject to the fish and game laws of the state, and the boating privileges shall be subject to the rules and regulations prescribed by the superintendent of public works."

"Sec. 471. No state lands in or adjacent to Buckeye Lake, Indian Lake, Lake St. Marys, or Portage Lakes shall ever be sold, but the superintendent of public works may lease such lands, including marginal strips and marsh lands around said lakes, the outer slopes of artificial embankments, islands, borrow pits and state lands adjacent thereto as he deems proper under the laws governing the leasing of canal lands."

The statutes to which said Section 471 refers as "governing the leasing of canal lands" are Sections 13965 to 13968 of the Appendix to the General Code. These latter statutes are too long for quotation here, but in brief provide that leases of canal lands may be made for periods of fifteen years at a rental equalling six per cent of the appraised value of the land.

The copy that you submit shows that the lease now in question was made in conformity with the terms of said Sections 13965, et seq., and was approved in writing by the governor and the attorney general, as prescribed by Section 464 General Code. The lease recites that the land therein described is to be used for agricultural purposes.

The paragraph which you quote from the lease is to the effect that the state may cancel the lease after ninety days' notice "whenever the same is required for park or allotment purposes by the State of Ohio." As has been seen, the tract of which the

leased land constitutes a part, has already been dedicated as a public park. Hence, the reference in the cancellation clause to "park purposes" must be taken to refer to a time when the State actually desires to make such improvements on the leased land as will fit it for public use as a park. This being true, it is plain that your department cannot now cancel the lease, upon the basis that the land is required for park purposes, with the view of turning the land over to the Boy Scouts; for such action would not involve the re-taking of the leased land for improvement as a park for the use of the general public. Of course, the very terms of Section 469 import that once the tract is improved for use as a park, the whole public will be entitled to its use, to the exclusion of any limited part of the public, whatever may be the organized form of such limited part. It is possible that the legislature would be authorized to limit the use of the land to a given class, such for instance, as all boys under a certain age; but it is very doubtful whether even the legislature would have power to make the further restriction that the land could be used only by boys belonging to a given organization, however liberal might be the rules of the organization in respect to its membership. At all events, it is clear that the executive branch of the government is without authority to open the lands as a park other than to the whole public, under such rules and regulations as may be proper for the protection of the interests of the state and of the public in its use of the park.

We are thus reverted to the question as to the authority of your department under the words "allotment purposes" as used in the lease. The practice in that respect has been that at the various reservoirs or lakes throughout the state originally constituting part of the canal system, plats have been made of the adjacent lands and the lots shown on the plats have been rented for cottage purposes, and for the incidental business purposes connected with the operation of a public park. With this practice in mind, it is believed that the option of cancellation reserved in the present lease is sufficiently broad to permit your department to cancel the lease for the purpose of making an allotment or plat of the leased land with the object of leasing the various lots to various Councils of the Boy Scouts organization for a fifteen year period. Of course, the allotment will have to be followed by the usual appraisement, and the payment of rental on the basis of six percent of the appraisement. It is not to be overlooked that the

present lease is for agricultural purposes, and that the use now being made of the land is of a purely private character; whereas if the allotment plan is carried out and leases made to Boy Scouts organizations, a substantial part of the public will be enabled to have an appropriate place for recreation.

*

Since Section 7620, General Code, Has Been Amended in 108 Ohio Laws, Pt. 1, Page 187, a Board of Education May Purchase Property and Erect a School Building and Control a School Outside of the Territorial Limits of the Districts Under its Control.

No. 3213—(Opinion Dated June 12, 1922.)

Hon. Jesse C. Hanley, Prosecuting Attorney, Lisbon, Ohio:

Dear Sir—Acknowledgment is made of the receipt of your request for the opinion of this department on the following:

“The City of Salem is located in the center of Perry Township, this county. The balance of the township, which for school purposes is under the control of the Perry Township school board, surrounds the City of Salem on all sides. The township school board desires to centralize their schools, acquire real estate and erect a building within the corporate limits of the City of Salem.

“Question: Can this school board purchase property, and erect and control a school outside of the territorial limits of the district under its control?”

This is a practical question, inasmuch as you indicate that Perry township surrounds the city of Salem on all sides and has its own school organization. Under the provisions appearing in the recently enacted compulsory attendance law (H. B., 111), each board of education in the state is required to furnish work in high school branches at some school within four miles of the residence of each child of compulsory school age.

It has been held by this department that the board of education could transport its pupils to any recognized high school, if it desired to do so, rather than furnish the high school work in its own district. This high school work is specifically mentioned in section 7764-1 and the language appearing therein is mandatory upon each board of education. In meeting this mandate, boards of education are at once confronted with the proposition of providing the work set forth in the compulsory education law from a practical stand-

point. A township rural school district may not desire to furnish a limited amount of high school work in its district and it may find it more expensive to pay the tuition of eligible pupils attending outside the district, as well as transportation charges in certain cases, than to enlarge its own school system and retain control of the same. The question then is the location of centralized school activity of the township at some central point, available to all pupils of the township, but this location desired to be selected lies within the confines of a municipality located and lying within the township school district.

Your question has likely arisen because the holding in Opinion 298, issued in 1917, reads:

"A board of education has no authority to erect a school building outside of its district."

At that time section 7620 read in part as follows:

"The board of education of a district may build, enlarge, repair and furnish the necessary school houses, purchase or lease sites therefor, or rights of way thereto, or purchase or lease real estate to be used for playgrounds for children or rent suitable schoolrooms, provide the necessary apparatus and make all other necessary provisions for the schools under its control. It also shall * * * make all other provisions necessary for the convenience and prosperity of the schools within the sub-districts."

Section 7620 was thereafter amended in 108 O. L., Part 1, page 187, to read as follows:

"The board of education of a district may build, enlarge, repair and furnish the necessary school houses, purchase or lease sites therefor, or rights of way thereto, or purchase or lease real estate to be used as playgrounds for children or rent suitable schoolrooms, either within or without the district, and provide the necessary apparatus and make all other necessary provisions for the schools under its control. It shall also provide for fuel for schools, build and keep in good repair fences enclosing such school houses, when deemed desirable plant shade and ornamental trees on the school grounds, and make all other provisions necessary for the convenience and prosperity of the schools within the sub-districts."

The power of a board of education to acquire, hold and possess real property as and for its corporate use, appears in section 4749 G. C., which reads in part as follows:

"The board of education of each district * * * shall be

a body politic and corporate and as such capable of * * * contracting and being contracted with, acquiring, holding, possessing and disposing of real and personal property, and taking and holding trust for the use and benefit of such district any grant or devise of land and any donation or bequest of money or other personal property and of exercising such other powers and privileges as are conferred by this title and the law relating to the public schools in this state."

It will be noted that section 7620 G. C., as it read in 1917, did not contain the words "within or without the district" and hence there was no authority at that time in such section for the board of education to acquire property or to build a building without the district, but the words "within or without the district" were added by the very next General Assembly at its regular session, thus giving a clear inference that it was the intention of the legislature that the powers granted in section 7620 G. C. were not only to continue to exist as theretofore, but were to be enlarged so that the powers might be exercised either "within or without the district".

It is held in Dillon on Municipal Corporations, 5th Edition, Volume 3, section 980:

"Municipal corporations being created chiefly as governmental agencies and for the attainment of local objects merely, the general rule is that they cannot purchase and hold real estate beyond their territorial limits unless the power is conferred by the legislature."

It clearly appears that specific power has been conferred by the legislature in amending section 7620, G. C., as appears in 108 O. L., Part 1, page 187. It will be noted too that section 4690, bearing upon the transfer of school property to a city or village and providing that school property does not pass in certain cases until transferred by warranty deed, was also amended in House Bill 140 (109 O. L., p. 588) so that the section does not now read as it did in 1917, when opinion 298, *supra*, was issued by the then attorney general.

For a case holding that school property may be owned by a board of education outside of its district, see Board of Education vs. Board of Education, 46 O. S., 595. In Opinion 298, *supra*, proper notice was taken of this decision of the Ohio Supreme Court in the following language:

"The above permission to hold property outside of the territorial limits of a district is an exception instead of the

general rule. Unless otherwise provided by statute, the general rule is that school property must be owned and controlled by the boards of education having jurisdiction over the territory in which such school property is located."

However, as it appears in 108 O. L., Part 1, page 187, section 7620 G. C. does now provide by exact language that a board of education may build, purchase or lease sites or rights of way for playgrounds, or rent suitable school rooms "without the district". It may be said that the use of the word "subdistricts", appearing at the end of section 7620, might have some bearing on this matter, but attention is invited to the decision of the Court of Appeals for Tuscarawas County in the case of Dover Township v. State ex rel Frederick E. Hershey, as reported in 30 O. C. A., page 302, the first branch of the syllabus reading as follows:

"1. Under the present school code of Ohio there is no provision for what were known in the past as sub-districts, and the sub-district school is, therefore, now without authority or legal existence."

It would appear, then, that the use of "sub-districts" in section 7620, G. C., means "districts," that is, the schools under the control of the board of education referred to in the section.

A question similar in a way to the one now under discussion is covered in Opinion 1616, issued on October 15, 1920, upon the question of vocational education activities, and the first branch of the syllabus of this opinion, appearing on page 1031, Vol. 2, Opinions of the Attorney General for 1920, reads as follows:

"1. A board of education can conduct its vocational classes outside the limits of the school district and can use its educational funds in the conduct of such classes."

The section of the law under which this conclusion was arrived at is section 7620 G. C., as amended in 108 O. L., page 187, the same section upon which your question rests in the present inquiry.

In reply to your inquiry it must therefore be held, as the opinion of this department, that since section 7620 G. C., has been amended as sent forth in 108 O. L., Part 1, page 187, a board of education may purchase property and erect a school building and control a school outside of the territorial limits of the district, under its control.

Where a County Surveyor has been Granted a Leave of Absence During Service in the United States Army Such Surveyor is Entitled to the Salary Provided by Statute During Such Absence.

No. 3210—(Opinion Dated June 12, 1922.)

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio:

Gentlemen—You have requested the opinion of this department as to the following matter:

On June 17, 1918, the board of county commissioners of a certain county took action as shown by the following resolution appearing on their journal:

"Whereas, request has been made to the Board of County Commissioners of County, by County Engineer, for leave of absence for an indefinite period of time (perhaps for remainder of term) or until his return from the United States service, the same to be without pay from and after July 3, 1918, until his return.

Therefore, it was moved by, seconded by, that the request of County Engineer, as stated in the foregoing be granted.

On roll call all voted aye."

The county surveyor named in said resolution is now asking the county to make payment to him of an amount equal to the salary of the county surveyor of said county for the last six months of 1918, during which time he was in the military service of the United States. He held the office of county surveyor from September, 1917, to September, 1921.

In connection with the foregoing statement of facts, the surveyor in presenting his account refers to the opinion of this department dated July 13, 1918, directed to your Bureau, and appearing in Opinions of Attorney General for 1918, Vol. I, p. 970. The conclusions reached in that opinion, as summarized in the head-notes are as follows:

"1. The mere fact that a county surveyor enlists in the army and leaves the county to take training at Ft. Benjamin Harrison, does not ipso facto vacate the office.

2. Under the provisions of Section 2785, G. C., the county commissioners have authority to fill a vacancy when a vacancy occurs; but they have no authority to declare and create a vacancy in the office of county surveyor.

3. County commissioners have no authority to attempt to fill a vacancy in the office of county surveyor unless a vacancy actually occurs either through the death or voluntary

resignation of the county surveyor, or unless he is removed under the provisions of Section 2790, G. C.

4. A county surveyor is entitled to the salary provided by law until he resigns or the office otherwise becomes vacant."

It is clear that if the conclusions of said opinion are correct then, in the present case, the county surveyor is entitled to payment of salary for the six months in question provided that his action in asking leave without pay and the action of the county commissioners on such request, all as disclosed by the above quoted resolution, did not amount to a waiver of or an estoppel against the payment of the salary in question.

This department is convinced, after careful review of the earlier opinion, that it is correct. The view was expressed therein at page 979, that the salary of a public officer is an incident to the office itself and not to the performance of the duties of the office. In support of that proposition an Iowa case was cited. Additional cases which further support the proposition are these:

State ex rel. Evans v. Gordon, 245 Mo., 12;
Bates v. City, 153 Mo., 18;
Sleigh v. United States, 9 Court of Claims, 369;
Leonard v. City, 48 Ind. App., 104;
People v. Bradford, 267 Ill., 486;
People v. Miller, 24 Mich., 458;
People v. Board, 75 N. Y., 38.

We are thus left with but the one question in the present case, whether, as above suggested, the county surveyor is now barred from asserting claim to the six months' salary on principles of waiver or estoppel. The answer is clearly in the negative. The county surveyor had no legal right when entering the service of the United States to ask for leave of absence either with or without pay; nor were the county commissioners vested with power to grant such leave. The whole affair as disclosed by the resolution above quoted is a nullity from a legal standpoint. See generally the reasoning of the previous opinion of this department. Any arrangement whereby an office attempts to waive salary or to stipulate for the performance of the duties of the office at a less salary than is provided by law, is contrary to public policy and void.

A case which may be said to be almost squarely in point in this connection is that of *United States v. Andrews*, 240 U. S., 90; 50 Law. Ed., 541.

In that case, an army officer had been granted six months' leave of absence to take effect January 1, 1907. This leave was later extended for the four months beginning July 1, 1907. On July 31, 1907, during the period of the extended leave, the adjutant general sent a telegram to the officer to the effect that while his leave was not revoked, his further absence would be without pay. The officer did not request leave without pay from August 1, 1907 to October 31, 1907 (being the last three months of the extended leave), but he did not file a protest against the action of the adjutant general in affixing a condition, and did not relinquish his leave and return to duty. The statute applicable to the case made provision for leave on half pay.

Under these facts, the Supreme Court, in an opinion by Mr. Chief Justice White held that the right to half pay could not be defeated by the action of the military authorities in affixing a condition that the leave should be without pay; that the officer's failure to protest against the affixing of the condition did not estop him from claiming his pay; and that the absence of the officer in the face of the condition affixed did not amount to an absence without leave for which, under the statute, no pay could be allowed.

The briefs and opinions in the case contain a full citation of authorities, among which is the case of *Glavey v. United States*, 182 U. S. 595; 45 Law. Er. 1247, holding that certain inspectors were entitled to additional statutory compensation through their appointment was made on the express condition that they would not receive the additional compensation.

The theory underlying these cases is that the statutory compensation governs and that officers are not at liberty by executive action to change the terms of the statute.

In the case now under consideration, it cannot be said that the action of the county surveyor in asking that he be given leave of absence without pay is a waiver in a true sense. It was entirely without consideration. Moreover, on the score of estoppel, it does not appear from the facts as submitted, that the county took any action to its own detriment on the strength of the surveyor's request for leave without pay; indeed, it is difficult to perceive what action to its detriment the county could take, since on the one hand the county surveyor was in possession of his office while he was in the military service, and on the other hand the county commissioners were without authority to give legal sanction to the leave of absence.

In conclusion it is proper to note that the salary of county surveyors is fixed by law upon the basis of road mileage, population, and tax duplicate; and that the salary is payable monthly out of the general county fund upon the warrant of the county auditor (Sec. 7181 G. C.). This being true, the matter of allowance or disallowance of the salary claimed for the six months in question is not one of discretion with the county commissioners; the surveyor is entitled to payment as of right under the terms of the statute.

✱

The Provision of Section 7248-1, General Code, are to be Applied to all Motor Trucks Regardless of Weight. The Provisions of Section 7248-1, General Code, Limiting Weight of Load to One Axle are Independent of the Provisions of Sections 7246 and 7247, G. C. as to Maximum Weight of Load.

No. 3214.—(Opinion Dated June 12, 1922.)

Hon. John L. Lott, Prosecuting Attorney, Tiffin, Ohio:

Dear Sir: You have recently requested the opinion of this office as to section 7248-1 G. C., reading as follows:

"No vehicle having more than seventy per cent. of the gross weight of vehicle and load on any one axle; no vehicle having a gross weight, including load, greater than fourteen thousand pounds on both wheels of one axle, and no vehicle equipped with solid rubber tires averaging less than seven-eighths of an inch in thickness for tires of five inches and less in width, nor less than one inch in thickness for tires of more than five inches, but not exceeding eight inches in width, nor less than one and one-eighth inches in thickness on tires of more than eight inches in width, shall be operated upon the improved highways, streets, bridges or culverts within this state. Thickness of solid rubber tires as used herein shall be the average thickness of rubber measured from the top of the flanges of the tire channel."

The question you are concerned about is whether the provisions of said section in prescribing a limitation of weight which may be carried upon one axle are to be applied to all motor trucks without regard to weight of vehicle and load; or to be applied only to such motor trucks as are carrying the maximum weight including weight of vehicle and load allowed by law (Section 7246 and 7247, G. C.).

In the view of this office, the provisions of said Section 7248-1

are to be applied to all motor trucks regardless of weight. As you know, said Section 7248-1 is part of the so-called Burke law (109 O. L., 546) which enacts much original legislation regarding weights, etc., of motor vehicles driven upon the public highways. Not only is there a maximum limitation prescribed for weight of vehicle and load, but there are other limitations such, for instance, as those set out in Section 7248, G. C., limiting the number of pounds which may be carried upon each inch of tire width. Clearly, these provisions as to weight with reference to tire width are interior limitations entirely independent of maximum weight limitations.

No reason is perceived for thinking that the provisions of Section 7248-1 are different in principle from those in Section 7248. In other words, the provisions of Section 7248-1, limiting weight of load as to one axle, are independent of the provisions of Sections 7246 and 7247 as to maximum weight of load.

It is quite true that the main purpose of the so-called Burke law was to prevent the driving of excessively heavy loads upon the public highways of the state; and it may be that from a practical standpoint the provisions of Section 7248-1 are much more drastic than is necessary to accomplish the general object of the law. Consideration along this line, however, are not admissible as an argument against accepting at their face value the clearly expressed terms of the section in question.

You also mention the limitation based on width of tire, as set out in section 7248 G. C. Clearly, the limitations in section 7248-1 are just as much independent of those of section 7248 as they are of those of sections 7246 and 7247.

While the point is not directly involved in your inquiry, it may be observed that, taken from a practical standpoint, the first clause of section 7248-1, G. C.

“No vehicle having more than seventy per cent. of the gross weight of vehicle and load on any one axle”

was doubtless intended to refer to vehicles having more than one axle; while the second clause of said section

“no vehicle having a gross weight, including load, greater than fourteen thousand pounds on both wheels of one axle,”

when read in the light of the first clause, was probably intended to reach the case of vehicles having only one axle, as for instance, a two-wheeled trailer.

County Commissioners Under Authority of Section 9857, General Code, May Levy a Tax for the Purpose of Paying One Half of the Expense of Constructing a New Exhibit Building for a County Agricultural Society. Such Levy is Subject to the General Tax Limitations.

No. 3211—(Opinion Dated June 12, 1922.)

Hon. N. E. Kidd, Prosecuting Attorney, Marietta, Ohio:

Dear Sir—Receipt is acknowledged of your recent favor which reads as follows:

“Will you please favor me with an opinion on the following question: Some twenty-five years ago an agricultural society was formed in Washington County, organized and known as The Washington County Agricultural and Mechanical Association. This society owns the site where its annual fairs are held and also owns the buildings thereon. It annually receives from Washington County \$800 under Section 9880-1 and \$1500 as proceeds of a levy made by the Board of Commissioners under Section 9894. The association now asks the Board of County Commissioners to pay one-half of the cost of the construction of a new exhibit building which the association is planning to erect. Can the Board of Commissioners legally levy for this purpose and if so to what extent?”

Pertinent to your question, it may be generally stated, that the authority of the county commissioners to levy a tax for the benefit and encouragement of county agricultural societies is defined and limited by the provisions of the General Code. Among such provisions appears Section 9887 G. C. and which provides as follows:

“Sec. 9887. When a county society has purchased, or leased real estate whereon to hold fairs for a term of not less than twenty years, or the title to the grounds is vested in fee in the county, but the society has the control and management of the lands and buildings; if they think it for the interests of the county and society, the county commissioners may pay out of the county treasury the same amount of money for the purchase or lease and improvement of such site as is paid by such society or individuals for that purpose, and may levy a tax upon all the taxable property of the county sufficient to meet such payment.”

Under the provisions of the section quoted, it would seem apparent that when a county agricultural society owns, or has leased for a period of twenty years, or purchased the real estate whereon fairs have been or are to be held, and the society has

control and management of the land and buildings situated thereon, or in case that the title of the land is in the county, and the management and control of the buildings in the society, the county commissioners are authorized if they deem it for the best interests of the county and society to pay out of the county treasury the same amount of money for the purchase, or lease and "improvement" of such a site as is paid by the society for that purpose.

Construing the section with regard to the meaning of the word "improvement" as used therein, it is believed that the erection of an exhibit building such as is mentioned, may reasonably be held to be "an improvement of the site", authorized under the provisions of this section.

Your inquiry states, that the society in question was organized as an agricultural society in Washington County some twenty-five year ago, and in the absence of more specific information it is presumed that the organization was effected under an earlier form of Section 9800 G. C., possibly Section 3697 of the Revised Statutes, which provided at that time for the organization of county agricultural societies, in manner and form similar to the provisions now obtaining for the organization of such societies under the provisions of Section 9880 G. C. Assuming these facts to be true, it would seem that Section 9885 G. C. would recognize such a society by the language used in the section, as a county society, which "had been organized" previous to the passage of the act and comprehended by the terms of the section, and upon which corporate powers are conferred, equally with such societies which may have been subsequently organized. Hence for all purposes it would seem that the society mentioned, may be deemed a county agricultural society and entitled to the privileges generally extended by statute to such societies. Such reasoning is thought to be additionally supported in view of your statement that the society considered is now receiving benefits under Section 9880-1 and 9894 G. C., and presuming such conclusions correct, it would obviously follow that such a society would come within the meaning of the term "county society" as used in Section 9887 G. C. under the provisions of which the tax levy previously considered is authorized.

Upon such considerations therefore, it is reasonable to conclude that your question should be answered in the affirmative and that under the circumstances indicated, the county commissioners under the authority of Section 9887 G. C. may levy a tax for the purpose mentioned, and are authorized to expend from the county funds,

a sum equal in amount to that expended by the society for the erection of said exhibit building, said levy however being subject to the general tax limitation prescribed in such cases by the provisions of the General Code.

3

County Auditor has no Authority to Issue a Duplicate Warrant Where the Original Warrant has Been Lost. However, it is Thought That the General Policy as Expressed in Section 246 General Code, Might Be Followed. A Bond Should Be Given in Double the Amount of the Warrant to Protect Against Loss on Account of the Duplicate Warrant.

No. 3212—(Opinion Dated June 12, 1922.)

Hon. Louis H. Capelle, Prosecuting Attorney, Cincinnati, Ohio:

Dear Sir—Receipt is acknowledged of your recent communication which reads as follows:

“On March 13, 1922, the treasurer of Anderson Township, Hamilton County, left with the teller of the Fifth Third National Bank of Cincinnati, Ohio, to be forwarded to the First National Bank of Mt. Washington, Ohio, for credit to his account as treasurer of Anderson Township, County Warrant No. 8620 for \$323.40, representing moneys due the said township from the collection of taxes.

The warrant has been lost in the mails and request has been made for the issuance of a duplicate warrant therefore.

This department respectfully requests an opinion from you as to the authority of the auditor of this county to issue a duplicate warrant in lieu of the warrant which has been lost.”

Pertinent to your question, section 2570 G. C. defines and specifies the nature of the warrants the county auditor is authorized to issue against the funds of the county treasury, the section reads as follows:

“Sec. 2570. Except moneys due the state which shall be paid out upon the warrant of the auditor of state, the county auditor shall issue warrants on the county treasury for all moneys payable from such treasury, upon presentation of the proper order or voucher therefor, and keep a record of all such warrants showing the number, date of issue, amount for which drawn, in whose favor, for what purpose and on what fund. He shall not issue a warrant for the payment of any claim against the county, unless allowed by the county commissioners, except where the amount due is fixed by law or is allowed by an officer or tribunal authorized by law so to do.

Upon examination of the section quoted, it would seem that the first paragraph clearly defines the nature of the warrants which may be issued and drawn by the county auditor upon the county treasurer, while the last paragraph of the same, equally indicates as to what warrants, said auditor is precluded from issuing. Hence it may be concluded, that except in such cases as may otherwise be provided by law, the authority of the county auditor to issue warrants upon the funds of the county treasurer, is limited to the provisions of this section, and since the section quoted, does not authorize the issuance of duplicate warrants by the county auditor, and the General Code makes no special provision relative to such a matter, it would seem impossible to conclude otherwise, than that such authority does not exist; consequently it would follow that specific answer to your inquiry may only be made in the negative.

It is true special provision is made by the General Code, in the event of the loss of a warrant issued by the Auditor of State under section 246 G. C., which provides, that whenever it is made to appear to the satisfaction of the auditor of state, that any warrant by him issued upon the state treasury, has been lost or destroyed prior to its presentation for payment, and there is no reasonable probability of its being found or presented, the auditor may issue to the proper person a duplicate of the lost or destroyed warrant provided that he shall require of the person making such application a bond in double the amount of such claim, payable to the state of Ohio, with surety to the approval of said auditor and the treasurer of state, conditioned to make good any loss or damage sustained by any person or persons on account of the issuance of said duplicate, and the subsequent presentation and payment of the original. It may be noted, however, that section 246 G. C. cited *supra* pertains only in the case of the auditor of state, and could not be extended to apply in the case of a county auditor. However, it is thought as a practical solution of your question, the general policy as expressed in section 246 G. C. might be followed by the county auditor in the instance cited, and a duplicate warrant issued by him upon receipt from the township treasurer, of bond in double the amount of the lost warrant, to secure himself against any loss resulting from the issuance of said duplicate warrant, and under the circumstances it would seem incumbent upon the auditor to require good and sufficient sureties upon such bond, since it is believed that a failure of the same would not relieve that official from personal liability, should such a contingency arise.

Section 6602-1 General Code Confers no Authority upon the County Commissioners to Employ a Consulting Engineer in Addition to That of Sanitary Engineer as Provided in Said Section. This Section Contemplates the Appointment of an Individual as Such Sanitary Engineer. There is no Authority to Appoint a Partnership or Corporation of Engineers.

No. 3209—(Opinion Dated June 12, 1922.)

Hon. Earl C. Krueger, Prosecuting Attorney, Sandusky, Ohio:

Dear Sir—Receipt is acknowledged of your recent communication which reads as follows:

“I have been requested by the Board of County Commissioners of Erie County, Ohio, to obtain from you an opinion upon the following, to wit:

1. Under Section 6602-1 of the General Code of Ohio, which provides for the employment of a competent sanitary engineer in counties of less than 100,000 population, can the commissioners also employ a consulting sanitary engineer in such counties having less than 100,000 population in addition to such sanitary engineer in the event that such sanitary engineer would require the services of a consulting engineer on certain special projects within the county in line with his duties.

2. Under this same section may the county commissioners employ as a competent sanitary engineer a partnership of engineers or a corporation of engineers, or must it be an individual?”

Under the provisions of section 6602-1 G. C. the authority of the county commissioners, in counties having a population of less than 100,000, to employ a sanitary engineer for purposes relevant to this act, is thought to be indicated in the following portion of the section which reads as follows:

“Any such board of county commissioners may employ a competent sanitary engineer for such time or times and on such terms as they deem best.”

It would seem clear that the portion of the section quoted specifically authorizes the county commissioners in counties having a population of less than 100,000, to employ a competent sanitary engineer, to fix the time of such official's employment and evidently to determine the compensation to be paid in such event. It would seem obvious also, that the language used makes no provision for the employment of a “consulting engineer”, such as your inquiry

indicates, in addition to the sanitary engineer stipulated by the provisions of the section, and it would seem to be only reasonably concluded from the import of the language used, that the authority of the county commissioners in respect to the employment of sanitary engineers is limited to the employment of "a competent sanitary engineer" in such cases. It is thought to be the well established rule in this state, that county commissioners may only exercise such powers as are granted them by the legislature, and in all financial transactions may bind the county in such matters only when so authorized. *State ex rel. vs. Menning*, 95 O. S., 99. See also recent decision of the Supreme Court, dated November 22, 1921 and styled *State of Ohio on Relation of H. D. Clarke, vs. W. H. Cook*, as Auditor of Ashtabula County, Ohio, in which the following language is used by the court:

"The legal principle is settled in this state, that county commissioners in their financial transactions, are invested only with limited powers, and that they represent the county only in such transactions, as they may be expressly authorized so to do by statute. The authority to act in financial transactions must be clear and distinctly granted, and if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county."

Applying the legal principle quoted to your first question, it would seem obvious that a negative answer must be returned, since section 6602-1 G. C. apparently confers no authority upon the county commissioners to employ a consulting engineer in addition to that of the sanitary engineer indicated by the provisions of said section.

Relative to your second question, as to whether or not a corporation or partnership may act in the capacity of the "competent sanitary engineer" indicated by section 6602-1 G. C., attention is chiefly directed to the limited authority expressed by the words used in the phrase "a competent sanitary engineer," and it is to be concluded that the language employed does not authorize the employment of a number of sanitary engineers, but contemplates merely one "competent sanitary engineer", hence it would follow that a partnership or corporation of engineers would not meet the requirements of this section, and it would seem apparent that only an individual under the circumstances may act in such capacity.

SECRETARY OF STATE

NEW CORPORATIONS

The Panda Steamship Co., Mentor Special District, \$500. T. H. Garry, H. S. Taylor, N. B. Snavely, M. E. Hurd, G. M. Breen.

The Alvin Realty Co., Cleveland, \$10,000. H. Charnas, M. W. Bruml, C. I. Goldsmith, H. S. Goldsmith, J. W. Little.

The Bucher Sales Co., New Philadelphia, \$25,000. G. W. Bucher, J. D. Bucher, L. C. Taylor, S. W. Buckner, B. S. France.

The Linden Motor Sales Co., Cleveland, \$500. J. E. Sandusky, J. L. Walters, J. L. Thompson, H. B. Albright, J. L. Walters, D. L. Metzgar.

The Haines Motor Car Co., Alliance \$500. C. L. Haines, W. E. Trump, H. Y. Stuckey, A. V. Moushey, J. M. Haines, C. M. Shetler.

The Harget Marble & Granite Co., Toledo, \$5,000. W. J. Harget, Jr., A. A. Conlin, A. W. Ryan, W. J. Duffey, G. C. Bryce.

The Pugh Bottle Co., Toledo, \$200,000. David Pugh, C. A. Guernsey, E. C. Wilke, F. P. Smith, H. L. Hova.

The Youngstown Dried Fruit Co., Youngstown, \$10,000. Samuel Villani, Rosa Villani, M. N. Antonucci, Michael Chirschigno, Mary Garrani.

The Ohio Electrical Mfg. & Sales Co., Cleveland, \$25,000. W. G. Powell, L. J. Rilske, R. J. W. Kline, R. W. Kenworthy, C. E. Moorhouse.

The Yellowstone Realty & Constr. Co., Cleveland, \$10,000. M. W. Bruml, B. D. Zieve, S. Zieve, H. S. Goldsmith, J. W. Little.

The Cuyahoga Holding Co., Cleveland, \$1000. J. A. Hadden, J. H. Kapp, J. R. Fraser, A. M. McNally, H. E. Chenoweth.

The National Press Photographic Service Co., Cleveland, \$10,000. C. M. Cottle, J. A. Conlon, M. Miehs, Sam Morris, F. A. Flowers.

The Cleveland Memorial Entombment Co., Cleveland, \$50,000. A. W. Harris, Hugo Karman, Geo. Schenker, J. E. Whittlesey, W. H. Allen.

The Cuyahoga Steel & Wire Co., Cleveland, \$30,000. W. H. Crawford, P. L. Hunt, L. F. Graybill, E. A. McCuskey, C. G. Herbruck.

The Emergency Road Grip Co., Mar-

ion, \$10,000. B. H. Rukes, B. E. Wilson, C. M. Burkett, A. L. Holcomb, H. E. Burkett.

The Waverly State Bank, Waverly, \$30,000. L. G. Dill, M. V. Watts, W. H. Johnson, C. M. Caldwell, C. J. Pressler.

The Star Restaurant Co., Youngstown, \$25,000. Harry Magulas, Peter Stratigos, Lewis Magulas, Peter Venardos, Harry Venardos.

The Nitrate Fertilizer Co., Columbus, \$20,000. W. J. Housel, A. C. Eggert, Theodosia Forbes, M. M. Eggert, L. J. Housel.

The French Glove Mfg. Co., Cleveland, \$50,000. H. C. French, Joseph Kalisky, Louis Sweningson, Jos. Brasty, A. A. Bene.

The John Herman Miller Co., Dresden, \$70,000. J. H. Miller, E. R. Diehm, Frank Harrison, F. S. Whitcomb, John Amersbach.

The John H. Miller Sons Co., Dresden, \$40,000. J. H. Miller, John Amersbach, Ellie R. Diehm, F. S. Whitcomb, Frank Harrison.

The Harrison Building Co., Toledo, \$10,000. N. E. Hutchens, Lee, H. Schminck, M. L. Haden, L. Mueller, F. E. Deihlman.

The L. & W. Realty Co., Cleveland, \$10,000. D. T. Lawrence, R. B. Lawrence, M. Ellison, H. Weiner, H. B. Olson.

The Kelley-Spigutz Tile Co., Cleveland, \$10,000. J. V. Kelley, Wm. Spigutz, Dorothea Kelley, aMargaret Spigutz, Fred Jirsa.

The Third National Bldg. Co., Dayton, \$10,000. H. G. Carnell, Wm. F. Bippus, A. Newsalt, J. S. McIntire, M. J. Gibbons, G. G. Shaw, W. S. Adler.

The Ruch Music Co., Cincinnati, \$10,000. Helen Ruch, John Ruch, F. H. Ruch, Zoe E. Callender, Wm. F. Madden.

The Akron Oldsmobile Co., Akron, \$10,000. A. J. Akers, Geo. Victor Albright, Roy B. Meade, Martha H. Terrill, W. D. Bald.

The Temple Pictures Co., Columbus, \$10,000. Ernest C. Russell, I. T. C. Dessinger, Edwin D. Stackhouse, Norene Jenkins, Fred H. Stackhouse.

The Gravatt Riding Academy Co., Painesville, \$1,000. A. L. Parmalee, Wm. Gravatt, W. B. Taylor, Laura A. Belot, Ellen L. Leland.

The Burch & Laraway Co., Akron, \$50,000. C. H. Murch, J. S. Laraway, J. H. Evans, C. D. Evans, H. R. Mader.

The Myers Dairy Co., Massillon, \$25,000. J. F. Myers, Elson Wefler, J. V. Hammersmith, Iva M. Arnold, G. W. Williams.

The Harrison, Hodgson & Wheeler Co., E. Liverpool, \$15,000. F. R. Harrison, W. L. Hodgson, G. A. Wheeler, Bessie Allison, T. P. Ferguson.

The United Counties Savings and Loan Co., Minerva, \$1,000,000. Fred M. Denison, E. Pery Creswell, C. W. Barnes, B. J. Fusner, H. D. Fuesrt.

The Corlett Mortgage Co., Cleveland, \$25,000. G. J. Divoky, Charles Kovanda, F. J. Kubec, C. A. Miller, A. F. Kral.

The Utility Mortgage & Bond Co., Cleveland, \$500. W. E. Schutt, G. F. White, C. M. Bolich, C. H. Lake, R. M. Juringus.

The National Bonded Co., Cleveland, \$10,000. F. E. Slocum, Sallie Zielinski, D. B. MacAusland, J. C. Castle, Josephine Keck.

The Hobert-Stone Co., Cleveland, \$2,500. W. S. Stone, J. Hobert, Jr., S. Dworkowitz, C. L. Giersch, F. C. Smith.

The Vianos Chocolate Co., Canton, \$40,000. M. N. Vianos, J. N. Vianos, Tony Pappas, A. Nickas, I. Krugliak.

The Winaland Oil & Gas Co., Mt. Vernon, \$100,000. J. Finney, F. Marion Snyder, C. B. Winland, B. L. Peterson, I. J. Denbow.

The Leedy-Luibel Co., Springfield, \$25,000. M. F. Tucker, F. B. Luibel, Helen C. Tucker, Nellie Luibel, J. M. Cole.

The Vernon Manor Co., Cincinnati, \$100,000. Melville Ritchie, Boyden Kinsey, J. G. Stephenson, Fred E. Wesselmann, H. G. Ponnssford.

The Fern Mfg. & Sales Co., Akron, \$10,000. H. A. Dawson, H. E. Miller, W. E. Fletcher, W. M. Miller, C. O. Cook.

The Edgemont Packing Co., Dayton, \$30,000. John Concannon, O. M. Botu, Nick Stanciu, M. G. Heldman, C. W. Dale.

The Advance Uoperties Co., Cleveland, \$500. J. C. Reeves, L. J. Sinnott, J. D. LeBel, Geo. H. Haire, H. W. Fortey, Jr.

The Deckard-Mitchell Co., Cleveland, \$500. H. O. Deckard, C. N. Mitchell, L. H. Neff, C. L. Giersch, C. E. Weisell.

The Commercial Engineering Co., Cleveland, \$5,000. J. L. Schmeller, H. A. Shibley, G. A. Pettit, A. H. Fiebach, M. O. O'Neil.

The Gas Control Valve Co., Cleveland, \$1,000. J. W. Dearing, F. R. Fortune, F. F. Gentsch, F. B. Kavanaugh, F. M. Pritts.

The Du-Kuef Mfg. Co., Cleveland, \$50,000. W. S. DuCharme, Frank Kuepherle, M. B. Glore, J. H. Kohrman, M. I. Kohrman.

The C. D. Peters Ice & Coal Co., Cincinnati, \$25,000. C. D. Peters, Q. V. Peters, K. M. Peters, H. E. Marble, S. C. Donohue.

The Maple Brook Dairy Co., Painesville, \$15,000. R. L. Brooks, L. H. Andrews, G. E. Sherman, L. V. Brooks, H. F. Andrews.

The Nash-McKeigh Motor Co., Toledo, \$600. P. T. Hollands, C. J. Flanagan, L. R. Wickenden, E. C. Froehlich, J. K. McKeough.

The Clark-Hoffman Co., Columbus, \$10,000. L. A. Clark, C. O. Hoffman, J. C. Strikler, J. M. Clark, Harry F. Brown.

The Sears & Nichols Products Co., Columbus, \$10,000. L. F. Sater, Webb I. Vorys, Don McVay, Katherine M. King, D. C. Wharton.

The Household Finance Co., Cleveland, \$500. Frank J. Schneider, Jas. B. Ruhl, Robert A. Graham, Harry B. Hoehner, Edward N. Conrad.

The Art Process Co., Cincinnati, \$15,000. R. J. Harpster, J. L. Graham, J. C. Faber, E. L. Carson, Nellie Maier.

The Ohio-St. Louis Pump & Equipment Co., Urbana, \$50,000. H. W. Houston, Marian Livingston, Anna V. Graney, John H. Ayers, H. C. Vance.

The Enar Construction Co., Cleveland, \$10,000. Morris H. Wolf, N. Rosenberg, Fred S. Neubauer, Morris Rubin, M. A. Kuller.

The Schueneman Printing, Co., Akron, \$1,000. Ben W. Holub, Cyrus Murphy, A. C. Little, S. D. Stanson, Ralph G. Thomas.

The Trade Composition Clearing House, Cleveland, \$50,000. Geo. P. Weigel, Louis A. Trivison, Ida D. Trivision, Madedine E. Berger, Dale W. Brown.

PUBLIC UTILITIES COMMISSION

No. 2581—In the Matter of the Application of The Columbus, Delaware and Marion Electric Company for Authority to Issue \$2,000,000.00 Bonds.—Prayer Granted.

(Dated June 24, 1922.)

This day, after full hearing, due notice of the time and place of which was given to all parties in interest, this matter came on for consideration upon the application of The Columbus, Delaware and Marion Electric Company, (a corporation duly organized and existing under and by virtue of the laws of the state of Ohio), asking the consent and authority of this Commission to issue \$2,000,000.00, principal sum, of stamped six per cent, first and refunding mortgage bonds:

\$850,000.00, principal sum, thereof to be exchanged at par, for applicant's present outstanding eight per cent. series A, general and consolidated bonds, and the remaining

\$1,150,000.00, principal sum, thereof to be sold at not less than eighty-seven percentum of the principal amount thereof, and the proceeds of such sale devoted to the following purposes, viz:

The retirement of the remaining \$150,000.00, principal sum, of applicant's outstanding eight per cent. series A, General and Consolidated Bonds, and

The reimbursement of applicant's treasury for and on account of uncapitalized, capital expenditures therefrom within the five years next preceding the date of the filing of the application herein and to and including the thirtieth day of April, 1922.

The Commission, being fully advised in the premises, finds:

That the applicant now has outstanding \$1,000,000.00, principal sum of eight per cent. series A, General and Consolidated Bonds, the retirement and refunding of which is desirable at this time;

That within the five years next preceding the date of the filing of the application herein and to and including the thirtieth day of April, 1922, the applicant has actually expended from its treasury, for the payment and discharge of its obligations, and the construction, completion, extension and improvement of its facilities, not less than the sum of \$518,250.00 none of which was obtained by the issue of stock, bonds, notes

or other evidences of indebtedness, and the capitalization of which has not heretofore been authorized by order of this Commission

That the issue of applicant's said stamped six per cent. first and refunding mortgage bonds of the principal sum of \$1,700,000 is reasonably required, at the time and the money to be procured by the sale thereof, necessary for the payment and discharge or reorganization and readjustment of applicant's indebtedness, and the reimbursement of its treasury for and on account of the uncanceled, capital expenditures therefrom, as aforesaid, and

That, the applicant now having bonds issued and outstanding in excess of its issued and outstanding capital stock, the issue and disposition of said stamped six per cent. first and refunding mortgage bonds in excess of applicant's issued and outstanding capital stock and the expenditure of the proceeds thereof, as such excess, should be specifically consented to, authorized and approved,

and is satisfied that, by preliminary order now made and entered herein, consent and authority should be granted for the issue and disposition of applicant's said stamped six per cent. first and refunding mortgage bonds of the principal sum of \$1,700,000.00, and this proceeding continued for further consideration in so far as the applicant asks consent and authority to issue and dispose of \$300,000.00 additional principal amount of such bonds. It is, therefore,

Ordered, That said The Columbus, Delaware and Marion Electric Company be, and hereby it is authorized to issue its stamped six per cent. first and refunding mortgage bonds of the principal sum of one million, seven hundred thousand dollars (\$1,700,000.00), and that eight hundred and fifty thousand dollars (\$850,000.00), principal sum, of said bonds be sold for the highest price obtainable but not less than eighty-seven percentum of the principal sum thereof. It is further

Ordered, That any discount arising from a sale of said bonds for less than the principal sum thereof be amortized pursuant to the rules and regulation heretofore prescribed by this Commission. It is further

Ordered, That the issue and disposition of said bonds in excess of applicant's issued outstanding capital stock and the expenditures of the proceeds thereof, as such excess, as hereinafter provided, be, and hereby they are specifically consented to, authorized and approved. It is further

Ordered, That said stamped six per cent. first and refunding

mortgage bonds and the proceeds arising from the sale of that part thereof, be issued and expended for the following purposes, and no others, to-wit:

\$850,000.00, principal sum, of said bonds to be exchanged, at par, for a like principal sum of applicant's present outstanding eight per cent. series A, General and Consolidated Bonds, and,

The proceeds arising from the sale of that part of said bonds which are to be sold, used:

To retire, at 104, the balance, \$150,000.00, principal sum, of applicant's said outstanding eight per cent. series A, General and Consolidated Bonds, and

The reimbursement, to the extent of the balance of such proceeds, (\$518,250.00) of applicant's treasury for and on account of the uncapitalized, capital expenditures therefrom within the five years next preceding the date of the filing of the application herein and to and including the thirtieth day of April, 1922.

It is further

Ordered, That, forthwith upon the acquisition of any of said eight per cent. series A, general and consolidated bonds, the applicant render the same non-negotiable and, upon the acquisition of all of said bonds, cancel and destroy the same. It is further

Ordered, That the applicant make verified report to this Commission semi-annually, within fifteen days after the close of each calendar, semi-annual period, of the issue and disposition of said stamped six per cent. bonds, the expenditures of the proceeds thereof, and the disposition of said retired eight per cent. bonds, pursuant to the terms and conditions of this order. It is further

Ordered, That the consideration of said application, in so far as it asks consent and authority to issue and dispose of \$300,000.00, additional principal sum of said stamped six per cent. bonds be deferred pending the further investigation of this Commission.

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No. 2576—In the Matter of the Application of The Rural Electric Service Company for Authority to Issue \$40,000.00 Additional Capital Stock.—Prayer granted.

(Dated June 22, 1922.)

This day, it appearing to the Commission from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is un-

necessary, this matter came on for consideration upon the application of The Rural Electric Service Company, a corporation duly organized and existing under and by virtue of the laws of the state of Ohio, asking the consent and authority of this Commission to issue and dispose of its common capital stock of the par value of \$40,000.00, the proceeds arising from the sale thereof to be used: to pay its indebtedness for and on account of the purchase of material and the construction of additions and extensions to its facilities, to provide certain contemplated additions and extensions to its plant, and to expand its working capital.

The Commission, being fully advised in the premises, finds from the pleadings and exhibits filed herein and its independent inquiry and investigation thereupon:

That, with the expenditure of the proceeds of applicant's original issue of capital stock in the construction of its plant and facilities, the applicant, as of March thirty-first, 1922, was indebted on such account to the extent of the sum of \$24,-717.86;

That the applicant now has under contract or in contemplation the provision of certain additions and extensions to its facilities, the cost of which is estimated at the sum of \$14,000.00;

That, for the carrying on of its business, the applicant will require additional working capital to the extent of \$1,282.14, and

That the issue of applicant's common capital stock of the par value of \$40,000.00 is reasonably required, and the money to be obtained thereby, necessary for the payment and discharge of its indebtedness, the construction, completion, extension and improvement of its facilities, and the maintenance and improvement of its service, as aforesaid,

and is satisfied that consent and authority for the issue and disposition of said additional common capital stock should be granted. It is therefore,

Ordered, That said The Rural Electric Service Company be, and hereby it is authorized to issue its common capital stock of the par value of forty thousand dollars (\$40,000.00), and that said capital stock be sold for the highest price obtainable but not less than the par value thereof. It is further

Ordered, That the proceeds arising from the sale of said capital stock be, by the applicant, devoted to and used for the following purposes, and no others, to-wit:

The payment of applicant's indebtedness, as of March thirty-first, 1922, for and on account of the construction and

equipment of its plant and facilities to that date, not provided for by the initial issue of its capital stock, \$24,717.86

The construction of some nine and one-half miles of additional transmission line, and the equipment of the same, the cost of which is estimated at \$14,000.00

To be used as additional working capital, \$1,232.14.

It is further

Ordered, That the applicant make verified report to this Commission, semi-annually within fifteen days after the close of each calendar sem-annual period, of the issue and disposition of said capital stock and, in full detail, the expenditure of the proceeds thereof pursuant to the terms and conditions of this order.

No. 2587—In the Matter of the Application of The Miami Valley Transit Company for Consent and Authority to Issue and Dispose of Capital Stock.—Prayer Granted.

(Dated June 22, 1922.)

This day, it appearing to the Commission from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, this matter came on for consideration upon the application of The Miami Valley Transit Company, a corporation duly organized and existing under and by virtue of the laws of the state of Ohio, asking the consent and authority of this Commission to issue and dispose of common capital stock of the par value of \$25,000.00, \$22,500.00, par value, of such capital stock to be delivered, at par, in full and final payment of the consideration for all of the property, rights and other assets composing the bus line, operated, under the trade name, the Miami Valley Transit Company, by Mary F. Jackson, between the city of Norwood and the cities of Loveland and Milford, Ohio, (the purchase and acquisition of which, by the applicant, was duly consented to and authorized by the order this day made and entered in proceeding No. 2586), and the proceeds arising from the sale of \$2,500.00, par value, of said capital stock to be used as a working capital.

The Commission, being fully advised in the premises, finds from the pleadings and exhibits filed herein and its independent inquiry and investigation thereupon:

That, for purchase and sale purposes, the value of the

said property, rights and other assets to be acquired by the applicant of the said Mary F. Jackson, is not less than the sum of \$22,500.00;

That, for the carrying on of its business, the applicant will require a working capital of \$2,500.00, and

That the issue of applicant's common capital stock of the par value of \$25,000.00 is reasonably required, and the money to be obtained from the sale of \$2,500.00, par value thereof, necessary for the acquisition of property and the maintenance and improvement of applicant's service as aforesaid,

and is satisfied that consent and authority for the issue and disposition of said common capital stock should be granted. It is, therefore,

Ordered, That said The Miami Valley Transit Company be, and hereby it is authorized to issue its common capital stock of the total par value of twenty-five thousand dollars, (\$25,000.00), and that two thousand, five hundred dollars, (\$2,500.00), par value thereof, be sold for the highest price obtainable but not less than the par value thereof. It is further

Ordered, That said capital stock and the proceeds arising from the sale thereof be issued and/or expended for the following purposes, and no others, to-wit:

\$22,500.00, par value, of said capital stock to be issued, at par, to Mary F. Jackson in full and final payment of the consideration for all of the property, rights and other assets composing the bus line utility, operated between the city of Norwood and the cities of Loveland and Milford, Ohio, the purchase and acquisition of which, by the applicant, was duly consented to and authorized by the order this day made and entered in proceeding No. 2586.

The proceeds arising from the sale of \$2,500.00, par value, of said capital stock to be used as a working capital.

It is further

Ordered, That the applicant make verified report to this Commission of the issue and disposition of said capital stock and the expenditures of the proceeds thereof pursuant to the terms and conditions of this order. It is further

Ordered, That the finding hereinbefore set forth as to the value of said property and within authorization of the capitalization of the agreed consideration to be passed therefor, shall not be binding upon this Commission in any future proceeding involving rates and/or service.

No. 2157—In the Matter of the Application of The Trumbull and Mahoning Water Company for Permission to Issue \$506,000.00 of Its Capital Stock and \$250,000.00 of its Bonds.—Prayer Granted.

(Dated June 22, 1922.)

The Commission having heretofore, to-wit: Upon the fourteenth day of February, 1922, in pursuance to the opinion and mandate of the Supreme Court of Ohio in its Cause No. 17118, by order duly made and entered herein, consented to and authorized the issue by The Trumbull and Mahoning Water Company, of its stocks and bonds in such amount as is necessary to discharge or refund its indebtedness incurred in the acquisition, development and construction of its plant and facilities, and reopened this proceeding for the purpose of determining the amount of stock and bonds so to be issued; this day, after full hearing, said matter again came on for consideration upon the pleadings and exhibits filed herein and the record of the evidence offered at said hearing.

The Commission, being fully advised in the premises, finds:

That, as of February first, 1922, the applicant herein was indebted, for and on account of the acquisition of property and the construction, completion, extension and improvement of its facilities, as follows, to-wit:

To the estate of the late F. M. Osborne.....	\$ 405,620.73
To the estate of the late J. V. Morris.....	131,928.10
To D. M. Wise.....	67,741.84

Total.....	\$ 605,290.67
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and

That the issue of applicant's common capital stock of the par value of \$350,000.00 and its first mortgage, six per cent. bonds of the principal sum of \$300,000.00 is reasonably required, and the money to be procured thereby is necessary for the payment and discharge or lawful refunding of applicant's indebtedness as aforesaid,

and is satisfied that consent and authority for the issue and disposition of said capital stock and mortgage bonds should be granted. It is, therefore,

Ordered, That said The Trumbull and Mahoning Water Company be, and hereby it, specifically, is authorized to issue its common capital stock of the par value of three hundred and fifty thousand dollars (\$350,000.00), and its first mortgage, six per cent. bonds, dated February first, 1922, and maturing serially from February first, 1923 to February first, 1937, of the principal sum of

three hundred thousand dollars (\$300,000.00), and that said capital stock and bonds be sold for the highest price obtainable but not less than the par value of said capital stock nor less than eighty-five (85) percentum of the principal sum of said bonds. It is further

Ordered, That any discount arising from the sale of said bonds for less than the principal sum thereof be amortized pursuant to the rules and regulations heretofore prescribed by this Commission. It is further

Ordered, That the proceeds arising from the sale of said capital stock and bonds be, by the applicant, devoted to and used for the following purpose, and no other, to-wit:

The payment and discharge of the applicant's indebtedness, of the sum of \$605,290.67, as of February first 1922, incurred for and on the account of the acquisition of property and the construction, completion, extension and improvement of its facilities.

It is further

Ordered, That the applicant make verified report to this Commission of the issue and disposition of said capital stock and bonds and the expenditures of the proceeds thereof pursuant to the terms and conditions of this order.

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No. 2517—In the Matter of the Application of The Tawa Light and Power Company to Sell Its Stock.—Prayer Granted.

(Dated June 21, 1922.)

This day, it appearing to the Commission from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, this matter came on for consideration upon that part of the application of The Tawa Light and Power Company (a corporation duly organized and existing under and by virtue of the laws of the state of Ohio as The Paulding Electric Service Company, which name, by amendment of its charter, has been lawfully changed to its present name) asking the consent and authority of this Commission to issue common capital stock of the par value of \$25,000.00, to be exchanged for a like par amount of common capital stock, heretofore issued and sold by the applicant, as The Paulding Electric Service Company, under an order of the Division of

Securities of the Department of Commerce of the state of Ohio, the proceeds whereof were expended in the construction and equipment of the applicant's electrical utility property.

The Commission, being fully advised in the premises, finds from the pleadings and exhibits filed herein and its independent inquiry and investigation thereupon:

That the proceeds arising from the sale of \$25,000.00, common capital stock, issued and disposed of by the applicant, under its former name, The Paulding Electric Service Company, in the belief that the authority granted it by the Division of Securities, Department of Commerce of the State of Ohio rendered the same lawful, were actually expended in the construction and equipment of applicant's electrical utility property, and

That the issue and disposition of applicant's common capital stock of the par value of \$25,000.00 is reasonably required and necessary for the construction, completion, extension and improvement of its facilities as aforesaid,

and is satisfied that, at this time, consent and authority should be granted, by preliminary order herein, for the issue and disposition of applicant's common capital stock of the par value of \$25,000.00. It is, therefore,

Ordered, That said The Tawa Light and Power Company be, and hereby it is authorized to issue its common capital stock of the par value of twenty-five thousand dollars (\$25,000.00). It is further

Ordered, That said common capital stock be, by the applicant, issued, as fully paid, in exchange for a like amount of its common capital stock which it heretofore, under authority of an order of the Division of Securities, Department of Commerce of the state of Ohio, as The Paulding Electric Service Company issued and sold, at par, and the proceeds of which were used for the construction and equipment of its electrical utility property, as aforesaid. It is further

Ordered, That, forthwith upon the exchange of such capital stocks, the applicant cancel and destroy the said capital stock issued by it under its former name, The Paulding Electric Service Company. It is further

Ordered, That the applicant make verified report to this Commission of the issue and disposition of its said common capital stock and cancellation and destruction of the said capital stock which it

had heretofore issued, under its former name, pursuant to the terms and conditions of this order. It is further

Ordered, That said application, in so far as the same asks consent and authority to issue and dispose of additional capital stocks, be and hereby the same is continued for the further order of this Commission.

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No. 2578—In the Matter of the Application of The Ultimate Bus Company, of Martins Ferry, Ohio, for the Sale of Additional Common Stock.—Prayer Granted.

(Dated June 19, 1922.)

This day, after due notice to all parties in interest, this matter came on to be heard, and was heard upon the application of The Ultimate Bus Company, a corporation duly organized and existing under and by virtue of the laws of the state of Ohio with its principle office at Martins Ferry, Ohio, asking the consent and authority of this Commission to issue and dispose of additional common capital stock of the par value of \$21,800.00, the proceeds arising from the sale thereof to be used to purchase three additional busses and one truck at a cost of \$16,390.00 and to provide certain improvements to its facilities and equipment of the probable cost of \$5,420.00.

The Commission, being fully advised in the premises, finds:

That the applicant now has under contract the purchase of three additional busses at a price of \$4,760.00 each, and one truck at a price of \$2,100.00, or a total expenditure for new equipment of \$16,880.00;

That the applicant has in contemplation certain capital improvements to its facilities and equipment, the cost of which is estimated at the sum of \$3,020.00, and

That the issue of applicant's common capital stock of the additional par value of \$19,400.00 is reasonably required, and the money to be procured thereby necessary for the construction, completion, extension and improvement of its facilities as aforesaid,

and is satisfied that consent and authority for the issue and disposition of applicant's common capital stock of the par value of \$19,400.00 should be granted. It is, therefore,

Ordered, That said The Ultimate Bus Company be, and hereby it is authorized to issue its common capital stock of the par value

of nineteen thousand, four hundred dollars (\$19,400.00), and that said common capital stock be sold for the highest price obtainable but not less than the par value thereof. It is further

Ordered, That the proceeds arising from the sale of said common capital stock be, by the applicant, devoted to and used for the following purposes, and no others, to-wit:

The purchase of three additional busses, at the contract price of \$4,760.00 each, and one truck at the contract price of \$2,100.00.....	\$16,380.00
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The provision of certain improvements and additions to its facilities, as more fully described in the evidence offered at the hearing hereof, the transcript whereof being made a part of this order by reference, the cost of which is estimated at the sum of	3,020.00
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It is further

Ordered, That the applicant make verified report to this Commission semi-annually, within fifteen days after the close of each calendar, semi-annual period, of the issue and disposition of said capital stock and, in full detail, the expenditure of the proceeds thereof pursuant to the terms and conditions of this order. It is further

Ordered, That said application, in so far as the same asks consent and authority to issue additional common capital stock of the par value of two thousand, four hundred dollars (\$2,400.00) be, and hereby the same is denied.

ATTORNEY GENERAL

Where a Board of Education Refuses or Neglects to Pay its Normal or Deficiency Contributions to the State Teachers Retirement System, Such Local Board of Education is in Dereliction of Its Duty and Recourse Should be Had by Those Concerned to the Provisions of Section 7610-1, Which Provides That the County Board of Education, or Probate Court, as the Cases May be Shall Discharge the Duties Which Have Been Neglected by the Local Board of Education, and Where Money Has Been Paid Out From the County Fund by Those Authorized for the Local Board of Education, Such Sum Shall be Charged Against the School District for Which the Money was Paid.—Since January 1, 1922, a Board of Education, in Anticipation of the Collection of Current Revenues in Any Fiscal Year, May Under the Provisions of Section 5655 (H. B. 35) Borrow Money and Issue Certificates of Indebtedness, but no Loans Shall be Made to Exceed the Amount Estimated to be Actually Received From Taxes and Other Current Revenues for Such Fiscal Year, After Deducting All Advances, Nor Shall Such Certificates Run for a Longer Period Than Six Months or Bear a Greater Rate of Interest Than Six Per Cent. Nor Shall They be Sold for Less Than Par With Accrued Interest.

No. 3149—(Opinion Dated May 26, 1922.)

Hon. W. E. Kershner, Secretary State Teachers Retirement System,
Columbus, Ohio.

Dear Sir: Acknowledgment is made of the receipt of your request for the opinion of this department upon the following question bearing upon the administration of the state teachers retirement system:

“If a board of education refuses or neglects to pay its normal and deficiency contributions to the state teachers retirement system, what is the proper procedure on the part of the retirement board in the collection of these contributions?”

Section 7896-44 G. C. provides in part as follows:

“Each employer of a teacher who is a member of the retirement system shall pay to the employers’ accumulation fund a certain per centum of the earnable compensation of each such teacher to be known as the ‘normal contribution’

and a further per centum of the earnable compensation of each such teacher to be known as the 'deficiency contribution'. * * * Until the first such certification, the normal contribution shall be two and eight-tenths per centum of the members' salaries and the deficiency contributions shall be two and seventy-seven hundredths per centum of the members' salaries."

Section 7896-47 G. C. provides in part as follows:

"Each employer shall pay annually into the employers' accumulation fund, in such monthly or less frequent installments as the retirement board shall require, an amount certified by the retirement board which shall equal the per centum of the total compensation, earnable by all contributors during the preceding school year, which is the sum of the two rates per centum hereinbefore described and required to be computed, to-wit, the sum of the normal contribution rate plus the deficiency contribution rate. * * *."

Section 7896-52 provides:

"* * * Each employer shall certify to treasurer of said employer on each and every pay roll a statement as voucher for the amounts so deducted (from teachers' salaries) and for the amount of the normal contribution and the deficiency contribution payable by the employer as provided in this act. * * *"

Section 7896-53 G. C. reads in part:

"The treasurer of each employer (board of education) on receipt from the employer of the voucher for deductions from the salaries of teachers and for the contributions of the employer as provided in this act, shall transmit monthly or at such times as the retirement board shall designate the amounts specified in such voucher to the secretary of the retirement board."

Under sections above quoted it is clear that there is a mandatory placed upon each board of education in the estate and upon its clerk-treasurer, who is the agent and ministerial officer of the board of education, to perform the duties above named. It is noted that nowhere in the sections specifying these duties does it appear that the employer or the clerk-treasurer "may" do these things, but the word used is "shall," thus carrying a clear intent that these things should be done by a board of education without any question as to the advisability of doing it in any particular instance. In approaching an answer to your question your attention is invited to Opinion 2220, issued to you on July 1, 1921, and appearing at page 587,

Vol. 1, Opinions of the Attorney General for 1921. In that opinion one of the questions under consideration was to how a board of education, which had neglected or refused to levy a tax to meet the financial requirements of the state teachers retirement system, might raise funds to discharge its obligations put upon it by the state teachers retirement law. In the third branch of the syllabus of Opinion 2220, issued to you, it was held that:

"The normal contribution and the deficiency contribution due from a board of education to the state teachers' retirement systems are valid; existing and binding obligations, and where a board of education has neglected or refused to levy a tax to pay such contributions, in the manner provided for in section 7896-55 General Code, and a transfer of moneys from other funds of the board of education is not possible under section 2296 et seq. G. C., such board of education may borrow money or issue bonds under authority of section 5656 G. C., to meet such obligations."

Your former inquiry was upon the question of where a board of education "neglected or refused to levy a tax to meet financial requirements of the state teachers retirement system" and your present question is where the board of education "refuses or neglects to pay" its contributions to the state teachers retirement system, even though it might have the needed funds in its control.

Several portions of the teachers retirement act have been quoted above to make it clear that it is one of the duties of each local board of education to forward to the state teachers' retirement system its normal and deficiency contributions, based on its pay roll at each time as the state teachers retirement board may designate. The cases you have in mind are apparently those where a local board of education or its clerk-treasurer, in conjunction with the local board of education, refuses to make its normal deficiency contribution to the state teachers retirement system or neglects to do the same. Where such a condition is the case the remedy lies in Section 7610-1 G. C., as amended in 109 O. L., p. 552, and reading in part as follows:

"If the board of education in a district under the supervision of the county board of education fails * * * to pay out any other school money, needed in school administration, or to fill any vacancies in the board * * * the county board of education of the county to which such district belongs, upon being advised and satisfied thereof, shall perform any and all such duties or acts, in the same manner as the board of education by this title is authorized to perform them. But

in a city district, or in an exempted village district, the probate court, or in counties in which the probate court and the court of common pleas have been combined, the court of common pleas, upon being advised and satisfied thereof, shall act instead of the county board of education. All salaries and other money so paid by the county board of education, or by the probate court, or by the court of common pleas, shall be paid out of the county treasury from the general fund on vouchers signed by the president of the county board of education, or by the judge of the probate court, or by the judge of the court of common pleas, as the case may be, but there shall be a charge against the school district for which the money was paid. The amount so paid shall be retained by the county auditor from the proper funds due to such school district, at the time of making the semi-annual distribution of taxes."

From a reading Section 7610-1, supra, it would thus appear that where a local board of education neglects or refuses to pay its normal or deficiency contribution to the state teachers retirement system, the county board of education in a county school district, upon being advised and satisfied that there has been dereliction, shall thereupon proceed in the manner set forth in Section 7610-1 G. C. as to the carrying out of the duties of the local board of education in that particular district. One of these duties, as indicated heretofore, is to send in the normal and deficiency contribution on the part of the local board of education or its proper officer. If the secretary of the state teachers retirement system cannot receive these contributions from the local board of education or its officers, then the matter should be taken up with the county board of education under the authority granted in Section 7610-1 G. C., supra.

Since the question under consideration is the payments required by law by a board of education to the state teachers' retirement system, it is proper to call the attention of those in charge of the retirement system to a newly enacted section appearing in H. B. 33 (Griswold Act), and in effect since January 1, 1922. The method by which a board of education could use 5656 to make its payment to the state teachers' retirement system, was set out in Opinion 2220, issued to the secretary of the State Teachers Retirement System on July 1, 1921. Six months thereafter, on January 1, 1922, Section 5655 went into effect and this newly enacted section, providing for the issuing of certificates of indebtedness in order to care for immediate obligation, reads as follows:

"In anticipation of the collection of current revenues in

any fiscal year, the county commissioners of any county, the board of education of any school district or the township trustees of any township may borrow money and issue certificates of indebtedness therefor, but no loans shall be made to exceed the amount estimated to be actually received from taxes and other current revenues for such fiscal year, after deducting all advances. The sums so anticipated shall be deemed appropriated for the payment of such certificates at maturity. The certificates shall not run for a longer period than six months nor bear a greater rate of interest than six per cent. and shall not be sold for less than par with accrued interest."

It will be noted that in Section 5655 G. C. there is no time limit when such section is of no further effect, while on the other hand it is provided in Section 5656 G. C., as amended by the Griswold act (H. B. 33) that the right to borrow money or issue bonds in the manner provided in that section is limited to indebtedness created or incurred before the first day of January, 1924. The effect of this amendment to 5656 G. C. is that unless the Section should be further amended by the next general assembly, its provisions could not be used on indebtedness made after December 31, 1923. Attention is invited to Section 5655 as now in effect, for the reason that if the secretary of the retirement board advised the boards of education which are derelict that they have been given this new authority of issuing certificates of indebtedness for a short time, the amounts due from the districts in question, necessary for the uniform operation of the retirement act, might be forthcoming from those persons from the time the obligations are due, especially where such obligations are the normal and deficiency contributions due from the board of education itself.

In reply to your question submitted, you are advised that it is the opinion of this department:

1. Where a board of education refuses or neglects to pay its normal or deficiency contributions to the state teachers retirement system, such local board of education is in dereliction of its duty and recourse should be had by those concerned to the provisions of Section 7610-1, which provides that the county board of education, or the probate, as the case may be, shall discharge the duties which have been neglected by the local board of education, and where money has been paid out from the county general fund by those authorized for the local board of education, such sum shall be a charge against the school district for which the money was paid.

2. Since January 1, 1922, a board of education, in anticipation

of the collection of current revenues in any fiscal year, may under the provisions of Section 5655 (H. B. 33) borrow money and issue certificates of indebtedness, but no loan shall be made to exceed the amount estimated to be actually received from taxes and other current revenues for such fiscal year, after deducting all advances, nor shall such certificates run for a longer period than six months or bear a greater rate of interest than six per cent., nor shall they be sold for less than par with accrued interest.

✱

A Board of Township Trustees May Not, Except When Bonds are Issued Under Section 1223, General Code, Bind the Township by a Levy Under Section 1222, General Code, for Any Longer Period Than One Taxing Year. The Township Trustees are at Liberty Upon Securing Approval of Plans and Specifications by the Department of Highways and Public Works to Proceed With the Improvement of an Inter-county Highway or Main Market Road, Under the Provision of Section 3298-1 et seq, General Code. Payment May be Made by Special Assessment Upon Benefited Lands or by the Township as Provided in Section 3298-15-d, General Code. If Such Procedure is Carried Out the Township Trustees Could Not Make Use of Funds Arising From Levy Under Section 1222 General Code.

No. 3230—(Opinion Dated June 17, 1922.)

Hon. Jesse C. Hanley, Prosecuting Attorney, Lisbon, Ohio.

Dear Sir: You have recently addressed this department as follows:

"I would appreciate your opinion upon the following questions under Section 1222 General Code of Ohio:

1. The section provides that for the purpose of providing a 'fund' the tax may be put on, and the following Section 1223 General Code seems to indicate that the trustees are authorized to issue bonds to mature in not more than ten years. May the township trustees put this levy on for a period of ten years or are they limited to a levy for one year to provide the 'fund'?

2. May the township trustees after agreeing with the county commissioners and the state highway department that the township's share will be the amount of the grading and the county and state to surface the road, use the money raised by this levy and let the contract for the grading of the state road in accordance with plans and specifications approved by the state highway department and the county commissioners

or must the levy be used in a contract let by the state highway department?"

Sections 1222 and 1223 G. C. are both somewhat lengthy; and it is believed unnecessary to quote them in full.

The first two paragraphs of Section 1222 provide for a levy by county commissioners upon all the taxable property of the county "for the purpose of providing a fund for the payment of the county's proportion of the expense of state aid highway improvements." The final paragraph of said section reads as follows:

"For the purpose of providing a fund for the payment of the proportion of the cost and expense to be paid by the interested township or townships for the construction, improvement, maintenance or repair or highways under the provisions of this chapter, the county commissioners or the township trustees are authorized to levy a tax not exceeding two mills upon all taxable property of the township in which such road improvement or some part thereof is situated. Such levy shall be in addition to all other levies made for any purpose or purposes and the same shall not be construed as limited, restricted or decreased in amount or otherwise by any existing law or laws. Where the improvement is made upon the application of the county commissioners said county commissioners shall levy the tax and where the improvement is made upon the application of the township trustees said township trustees shall levy the tax. A county or township may use any moneys lawfully transferred from any fund in place of the taxes provided for under the provisions of this section."

Section 1223, among other things, authorizes the issuing of bonds by the county commissioners in anticipation of the collection of the tax named in Section 1222 when application for state aid is made by the county commissioners, and when the levy of the taxes is made by the county commissioners. Said Section 1223 also contains the following provision:

"* * * Where such construction, improvement or repair is made upon the application of the township trustees, such township trustees are hereby authorized to sell the bonds of the interested township in any amount not greater than the estimated compensation, damages, cost and expense of such construction, improvement or repair, and under like conditions hereinbefore prescribed for county commissioners. * * *"

The outstanding feature of the provision above quoted from Section 1222 is that the tax levy is authorized on account of improvements, etc., "under the provisions of this chapter." The

chapter thus referred to is composed of Section 1178 to 1231-7 G. C. relating to the state highway department (now a part of the department of highways and public roads).

Coming now to your first question:

As a purely theoretical proposition, the township trustees might from year to year make a levy for the purpose of accumulating a fund to be expended as contemplated by said Section 1222. In other words, the township trustees might start out to accumulate a fund through a period of years with the intention that when the fund reached a certain size it would be used for the purposes indicated by Section 1222. In practice, however, the procedure is not to await the passing of a number of years; but to issue bonds under Section 1223 and thus make available at the beginning of a period of time the required amount of funds instead of waiting until the end of the period. This procedure results largely from practical necessity, since the whole policy of our statutes is to require money to be actually or constructively in the treasury before obligations may be incurred against it. Adherence to this policy prevents in practice the certification by the township clerk of the proceeds of a tax levy as being available for expenditure until such time as the levy is actually collected or entered on the tax duplicate and in process of collection (see Sections 5660 and 5661). So that the township clerk could not during the tax collection year of 1922 certify as available for expenditure the proceeds of a tax levy which the township trustees might have in mind to make in the tax year of 1923 or subsequent therto. Moreover, if a given board of township trustees would lay down the general policy of accumulating a fund throughout a given period of years, the successors to that board of trustees would be in no wise bound by that policy, and might conclude instead to issue bonds so as to make the whole contemplated fund immediately available for a proposed improvement. In short, from a practical standpoint, the only way in which a really mandatory levy from year to year for a period of from two to ten years can be brought about under the provisions of Section 1222 is by the issuance of bonds under Section 1223; for when bonds are issued, then of course the levy will have to be made throughout the period of years covered by the bonds for the purpose of procuring moneys with which to discharge the installments of the bonds as they fall due.

With these matters in mind, your first question is answered by the statement that a board of township trustees may not, except

when bonds are issued under Section 1223 G. C. bind the township by a levy under Section 1222 G. C. for any longer period than one taxing year.

Taking up now your second question:

It has already been pointed out that by the express provisions of Section 1222 the levy authorized by that section is for construction, etc., "under the provision of this chapter." The following out of the provisions of the chapter indicated involves an application by either the county commissioners or township trustees (Sections 1191 and 1192 G. C.) for state aid. When such application is made the improvement work is carried out by the department of highways and public works and not by county or township (Sections 1195 et seq.). Moreover, it is noted that Section 1222 G. C. in referring to a levy made by the county commissioners provides that "the funds produced by such levy shall not be subject to transfer to any other fund, either by order of court or otherwise." While this provision is not carried into the paragraph above quoted relating specifically to a levy made by township trustees under Section 1222, clearly the latter levy is within the scope and purpose of the provision against transfer to any other fund. Certainly, neither the spirit nor the letter of the last paragraph of Section 1222 would be compiled with the deliberate making of a levy under that paragraph with the intention of ultimately seeking the transfer of the proceeds to another fund which might be used in a manner different from a fund raised under Section 1222. This point becomes the clearer when it is borne in mind that the levy made by township trustees under favor of the last paragraph of Section 1222 is free from all tax limitations; whereas, certain other funds may only be raised within certain tax limitations. It is therefore the view of this department that the accruals of the levy mentioned in the last paragraph of said Section 1222 may be used by township trustees only where proceedings are carried out in accord with the chapter of which that section is a part.

By amendment in 109 O. L. 299, the provisions of Section 1231 G. C. relating to main market roads were broadened in their conferring of authority on the state highway commissioner as to the manner in which he might co-operate with local subdivisions in work upon main market roads. However, the provisions of said section cannot be taken as authorizing the use of funds obtained under Section 1222 in the doing of work by or under the direction of the township trustees.

Section 1203 G. C. Reads:

"Nothing in this chapter shall be construed as prohibiting the county commissioners or township trustees from constructing, improving, maintaining or repairing any part of the inter-county highways within such county or township; provided however, that the plans and specifications for the proposed improvement shall first be submitted to the state highway commissioner and shall receive his approval."

The township trustees are therefore at liberty upon securing approval of plans and specifications by the department of highways and public works to proceed with the improvement of an inter-county highway or main market road. If the township trustees desire thus to proceed they may do so under the provisions of Sections 3298-1 G. C. In so proceeding, they may arrange for the payment of part of the cost by assessment on benefited land (Section 3298); or, on the other hand, they may order that the entire cost be paid by the township as a whole (Section 3298-15). In either case, the source of revenue for the township's share is as provided by Section 3298-15d and not as provided in Section 1222. Doubtless under favor of Sections 3298-1, et seq., the township trustees might in the case of a main market road, do only the grading, leaving the remainder of the work to be done as authorized by Section 1231 G. C. either by the state alone or by the state and county in co-operation. Such a course would involve a prior agreement by all subdivisions concerned, as outlined in Section 1231 G. C. But as already indicated, if such a procedure is to be carried out, the township trustees could not make use of funds arising from levy under Section 1222 G. C., since those funds are to be used only in case the work is carried out by the department of highways and public works, and not by or under the direction of the township trustees.

It is possible that in maintenances projects, by virtue of Section 1224 G. C. township trustees might, through arrangement with the state, use funds arising under Section 1222 in doing part of the work themselves, leaving the remainder to be done by the state. That question, however, is not here passed upon, since the project which you can describe is evidently not being undertaken as a maintenance project within the purview of Section 1224, but rather as an original construction with the view of bringing the road up to the state standard.

SUPREME COURT

MOTION DOCKET

17507—Nelson A. Mathews et al. v. Mary Joehrling et al. Motion for an order directing the Court of Appeals of Franklin county to certify its record. Overruled.

17518—The Adams Express Co. v. Mary Beckert et al. Motion for an order directing the Court of Appeals of Richland county to certify its record. Overruled.

17518—The Adams Express Co. v. Mary Beckert et al. Motion by the Pennsylvania Co., for an order directing the Court of Appeals of Richland county to certify its record. Overruled.

17529—The Lake Shore Moving & Storage Co. v. George W. Steele. Motion for an order directing the Court of Appeals of Cuyahoga county to certify its record. Overruled.

17553—Andrew L. Herrlinger, Assignee of Frank H. Kreimer, v. Anna M. Baker. Motion for an order directing the Court of Appeals of Hamilton county to certify its record. Overruled.

17554—George D. Hile, a taxpayer ex rel. City of Cleveland, v. The Cleveland Ry. Co. Motion for an order directing the Court of Appeals of Cuyahoga county to certify its record. Overruled.

17556—Justus Brown et al. v. William A. Brown. Motion for an order directing the Court of Appeals of Licking county to certify its record. Sustained.

17559—The Van Wert Gas Light Co. v. The Public Utilities Commission of Ohio. Motion by the City of Van Wert to be made party defendant in error in Cause No. 17559 on the General Docket. Sustained.

17561—Joseph G. Butler, Jr., v. The Federal Brass & Bronze Co. et al. Motion for an order directing the Court of Appeals of Mahoning county to certify its record. Overruled.

17564—Ludie Clifford Shelton, alias James Shelton, v. State of Ohio. Motion for leave to file petition in error

to the Court of Appeals of Hamilton County. Sustained.

17565—Ohio Automatic Sprinkler Co. v. Hannah Fender. Motion for an order directing the Court of Appeals of Mahoning county to certify its record. Sustained.

17566—Clyde Harper v. State of Ohio. Motion for an order directing the Court of Appeals of Allen county to certify its record. Sustained.

17567—Mary Cunningham v. City of Cincinnati. Motion for an order directing the Court of Appeals of Hamilton county to certify its record. Overruled.

17568—Firman Barrett et al. v. City of Cincinnati. Motion for an order directing the Court of Appeals of Hamilton county to certify its record. Overruled.

17569—Julius Friedeborn v. The Powers Regulator Co. Motion for an order directing the Court of Appeals of Hamilton county to certify its record. Overruled.

17571—W. H. Keifer v. State of Ohio. Motion for an order directing the Court of Appeals of Huron county to certify its record. Sustained.

17575—The Pittsburgh, Cincinnati, Chicago and St. Louis Rd. Co. v. Leroy C. Terry. Motion for an order directing the Court of Appeals of Montgomery county to certify its record. Overruled.

17582—Paul Knight v. State of Ohio. Motion for leave to file petition in error and for an order directing the Court of Appeals of Cuyahoga county to certify its record. Overruled.

17583—George E. Stevenson v. State of Ohio. Motion for leave to file petition in error to the Court of Appeals of Williams county. Overruled.

17598—Edward Dvorak v. State of Ohio. Motion for leave to file petition in error to the Court of Appeals of Cuyahoga county. Overruled.

17599—William Rentner v. City of Cleveland. Motion by plaintiff to dispend with printing Exhibits in Cause

No. 17599 on the General Docket. Sustained.

17526—Elva L. Loney v. W. W. Walkey, Admr., et al. Motion for an order directing the Court of Appeals of Knox county to certify its record. Overruled.

17570—Willis Heasley v. State of Ohio. Motion for an order directing the Court of Appeals of Huron county to certify its record. Overruled.

17576—Franklin Light v. Lora Light McCune et al. Motion for an order directing the Court of Appeals of Greene county to certify its record. Overruled.

17581—The Citizens Wholesale Supply Co. v. Wayne Downing. Motion for an order directing the Court of Appeals of Franklin county to certify its record. Sustained.

17450—Detroit & Cleveland Navigation Co. v. Colby Hade. Motion by plaintiff to extend time for filing printed record on petition in error as of right in Cause No. 17450 on the General Docket. Sustained.

17513—The State, ex rel. Milton C. Moore et al., v. Charles O. Silver et al. Motion for an order directing the Court of Appeals of Stark county to certify its record. Overruled.

17514—Trustees of the Cincinnati Southern Ry. Co. v. Leland G. Banning. Motion for an order directing the Court of Appeals of Hamilton county to certify its record. Overruled.

17515—Board of Trustees of the Sinking Fund of the City of Ironton v. The State, ex rel. James Erskine. Motion for an order directing the Court of Appeals of Lawrence county to certify its record. Overruled.

17515—Board of Trustees of the Sinking Fund of the City of Ironton v. The State, ex rel. James Erskine. Motion by defendant to dismiss the motion to certify record in Cause No. 17515 on the General Docket. Overruled.

17519—The Second National Bank of Ironton, Ohio, v. The Farmers & Mechanics Bank of Bath, N. Y. Motion for an order directing the Court of Appeals of Lawrence county to certify its record. Overruled.

17525—Dan Barbus v. State of Ohio. Motion for an order directing the

Court of Appeals of Mahoning county to certify its record. Overruled.

17528—John Doe, alias Andy Esperesi, v. State of Ohio. Motion for an order directing the Court of Appeals of Mahoning county to certify its record. Overruled.

17589—C. C. Timberman v. State of Ohio. Motion for leave to file petition in error to the Court of Appeals of Lorain county. Sustained.

GENERAL DOCKET

17198—Phillipina Schram v. City of Cincinnati. Hamilton. Judgment affirmed.

17332—City of Cleveland v. Francis Hanson. Cuyahoga. Judgment affirmed on authority of Adams Express Co. v. Beckwith, 100 Ohio St., 348.

17392—Charles Wilson v. City of Springfield. Clark. Judgment affirmed on authority of Froelich v. Cleveland, 99 Ohio St., 376.

17480—The State, ex rel. John S. Mohler, a taxpayer, v. Grant Beam et al., County Commissioners of Henry County, et el. Henry. Judgment affirmed on authority of McBride v. Marguerat, 99 Ohio St., 452.

16889—Orville M. Stewart v. State of Ohio. Van Wert. Judgment affirmed.

16916—James Morton v. State of Ohio. Cuyahoga. Judgment reversed.

17030—The Ohio Electric Ry. Co. v. The United States Express Co. Hamilton. Judgment affirmed.

17131—Helen F. Bennett v. William A. Fleming et al. Pickaway. Judgment reversed.

17152—Henrietta Thiessen et al. v. Ida Moore et al. Lorain. Judgment affirmed as to the fifty-four acres and reversed as to the two acres.

17165—Meyer J. Woodruff v. Arnold Paschen. Lucas. Judgment affirmed.

17179—C. O. Black et al. v. Sylvania Producing Co. Monroe. Judgment affirmed.

17218—The State, ex rel. Methodist Childrens' Home, v. Board of Education. In mandamus. Writ denied.

17232—The State, ex rel. Edward C. Stanton, v. Frank T. Andrews et al.,

County Commissioners. Cuyahoga. Judgment reversed.

17294—Village of Leipsic et al. v. Jacob C. Wagner. Putnam. Judgment reversed.

17325—Everett Spaulding, Treas., v. Emmett M. Wickham. Delaware. Judgment reversed.

17329—Thomas H. Wells, Jr., v. Stasia W. Wells. Trumbull. Judgment reversed.

17342—James McCaffery v. State of Ohio. Cuyahoga. Judgment affirmed.

17367—The J. G. McCrory Ohio Co. v. Cornelia B. Rabbitts et al. Clark. Judgment reversed.

17371—Charles R. Cochran v. State of Ohio. Columbiana. Judgment affirmed.

17372—Thomas Cloran v. State of Ohio. Columbiana. Judgment affirmed.

17373—John Phillips v. State of Ohio. Columbiana. Judgment affirmed.

17374—A. R. Anania v. State of Ohio. Columbiana. Judgment affirmed.

17394—State of Ohio v. Harry Pape. Clermont. Judgment reversed.

17395—State of Ohio v. William Wilke. Clermont. Judgment reversed.

17396—State of Ohio v. L. B. Heine. Clermont. Judgment reversed.

17397—State of Ohio v. Bert Friend. Clermont. Judgment reversed.

17398—The State, ex rel. John M. Hoel, v. Dan H. Brown. Darke. Judgment affirmed.

17409—August Schario v. State of Ohio. Stark. Judgment reversed.

17419—Richard H. Shafer et al. v. Henry P. Streicher et al. Franklin. Judgment reversed.

17482—Edward D. Cullen, as Vice-Mayor of City of Toledo, etc., v. The State, ex rel. City of Toledo, by Frank M. Dotson, Director of Law. Lucas. Judgment reversed.

17509—The State, ex rel. Sherrard M. Johnson, solicitor, etc., v. J. Earl Chandler, Auditor, etc. In mandamus. Demurrer overruled.

17587—Arthur H. Richards et al., doing business, etc., et al. v. Levi V. Goodale et al., Board of Trustees of the Cincinnati Southern Ry. et al. Hamilton. Judgment affirmed on authority of State, ex rel. Sherrard M. Johnson, etc., v. Sarl Chandler, Auditor, etc., this day decided.

PUBLIC UTILITIES COMMISSION

No. 2397—In the Matter of the Application of The Ohio Public Service Company for Permission to Purchase Certain Properties and for Authority to Increase Its Capital Stock and Issue Its Preferred Stock and Create a Bonded Indebtedness. Supplemental Order.

(Dated June 5, 1922)

The commission having heretofore, to wit: Upon the twelfth day of October, 1921, by preliminary order, duly made and entered herein, found that, for purchase and sale purpose, the value of the property of The Trumbull Public Service Company, The Massillon Electric & Gas Company, The Alliance Gas & Power Company, The Lorain County Electric Company and The Utilities Construction Company, was not less than the sum of \$10,045,780.00; authorized the issue and disposition of certain capital securities to provide the partial consideration therefor, such consideration to become full and final in the event of the failure of the applicant thereafter to show to the commission greater value as a basis for increasing said consideration, and continued this matter for the receipt and consideration of further proof as to the value of the aforesaid properties, the purchase and acquisition of which, by the applicant, was duly consented to and authorized by an order made and entered in Proceeding No. 2306.

This day, after full hearing, said matter again came on for consideration upon the pleadings and exhibits filed herein, the record made upon said hearing, and after an independent examination, by the commission, of said company's property or books.

The commission being fully advised in the premises, finds:

That for purchase and sale purposes, the value of the properties of said The Trumbull Public Service Company, The Massillon Electric & Gas Company, The Alliance Gas & Power Company, The Lorain County Electric Company and The Utilities Construction Company, is not less than the sum of \$14,085,063.00;

That, in addition to the capital securities heretofore herein authorized to be issued for and on account of the acquisition of the aforesaid property, the issue of applicant's common capital stock \$764,200.00; seven percent cumulative preferred capital stock, \$2,500,000.00; first and refunding mortgage,

seven and one-half per cent Series A bonds \$1,500,000.00, is reasonably required, and the money to be procured by the sale of said preferred capital stock and bonds, necessary for and on account of the acquisition of said property, aforesaid, and

That the issue and disposition of said bonds in excess of applicant's issued and outstanding capital stock should be specifically consented to, authorized and approved.

and is satisfied that consent and authority for the issue and disposition of said additional capital securities should be granted. It is, therefore,

Ordered, That, in addition to the capital securities heretofore authorized herein to be issued, said The Ohio Public Service Company be, and hereby it is further authorized to issue its common capital stock of the par value of seven hundred sixty-four thousand, two hundred dollars, (\$764,200.00), its seven per cent cumulative preferred capital stock of the par value of two million, five hundred thousand dollars, (\$2,500,000.00), and its first and refunding mortgage, seven and one-half per cent Series A bonds of the principal sum of one million, five hundred thousand dollars (\$1,500,000.00); that said common capital stock be issued as fully paid and at par, and that said preferred capital stock and bonds be sold for the highest price obtainable but not less than eighty (80) per centum of the par value of said preferred capital stock nor less than eighty-five (85) per centum of the principal amount of said bonds. It is further

Ordered, That any discounts arising from the sale of said preferred capital stock and/or bonds for less than the par value principal sum thereof be extinguished/amortized pursuant to the rules and regulations heretofore prescribed by this commission. It is further

Ordered, That the issue and disposition of the aforesaid bonds in excess of the applicant's issued and outstanding capital stock, and the expenditure of the proceeds thereof as such excess, as hereinafter provided, be, and hereby they are specifically authorized, consented to and approved. It is further

Ordered, That said common capital stock be delivered, as fully paid and at par, and the proceedings arising from the sale of said preferred capital stock and bonds paid, as the final installment of the full consideration for all of the property, rights and other assets, of The Trumbull Public Service Company, The Massillon Electric & Gas Company, The Alliance Gas & Power Company, The Lo-

rain County Electric Company, and The Utilities Construction Company, and for no other purposes whatsoever. It is further

Ordered, That the applicant make verified report to this commission of the issue and disposition of said common and preferred capital stocks and said bonds, and the expenditure of the proceeds thereof, pursuant to the terms and conditions of this order. It is further

Ordered, That the finding hereinbefore set forth as to the value of said property and the authorization of the capitalization of the consideration to be passed therefor, shall not be binding upon this commission in any future proceeding involving rates and/or service.

*

No. 2396—In the Matter of the Joint Application of The Trumbull Public Service Company, The Massillon Electric & Gas Company, The Alliance Gas & Power Company, The Lorain County Electric Company, The Utilities Construction Company, and The Ohio Public Service Company, for Permission to Purchase the Properties and Assets of the Said The Trumbull Public Service Company, The Massillon Electric & Gas Company, The Alliance Gas & Power Company, The Lorain County Electric Company and The Utilities Construction Company. Supplemental Order.

(Dated June 5, 1922)

The commission having heretofore, to wit: Upon the twelfth day of October, 1921, by preliminary order, duly made and entered herein, found that, for purchase and sale purposes, the value of the property of The Trumbull Public Service Company, The Massillon Electric & Gas Company, The Alliance Gas & Power Company, The Lorain County Electric Company and The Utilities Construction Company, was not less than the sum of \$10,045,780.00; consented to and authorized the sale, by said companies, of all their property, rights and other assets to The Ohio Public Service Company, and the purchase, by said last named company, of the same for a partial consideration of \$10,045,780.00, such consideration to become final in the event of the failure of the applicants thereafter to show to the commission a greater value for said property as a basis for increasing said consideration, and continued this matter for the receipt and consideration of further proof as to the value of the aforesaid properties:

This day, after full hearing, said matter again came on for consideration upon the pleading and exhibits filed herein, the record

made upon said hearing, and after an independent investigation and examination, by the commission, of said companies' properties and books.

The commission being fully advised in the premises, now finds:

That, for purchase and sale purposes, the property of said The Trumbull Public Service Company, The Massillon Electric & Gas Company, The Alliance Gas & Power Company, The Lorain County Electric Company and The Utilities Contracting Company, is of a value of not less than the sum of \$14,085,063.00,

and is satisfied that the said preliminary order, so made and entered herein as aforesaid, should be modified and amended accordingly. It is, therefore,

Ordered, That the order, made and entered herein upon the twelfth day of October, 1921, be, and hereby it is modified and amended in the following regard, and no other, to wit:

"It is, therefore,

"Ordered, That said The Trumbull Public Service Company, said The Massillon Electric & Gas Company, said The Alliance Gas & Power Company, said The Lorain County Electric Company and said The Utilities Contracting Company be, and hereby they are authorized to sell and convey all of their properties, rights, business and other assets, as the same are more fully described and set forth in the exhibits filed herein, which exhibits hereby are made parts of this order by reference, to said The Ohio Public Service Company; and said The Ohio Public Service Company hereby is authorized to purchase and acquire the said properties, rights, business and other assets of said aforesaid corporations and to pay therefor a consideration of \$14,085,063.00, as provided by the preliminary and final order, made and entered, as of dates October 12th, 1921, and June 5th, 1922, respectively, in Proceeding No. 2397. It is further

"Ordered That, forthwith upon the exercise of the authority herein granted, said companies shall file with this commission schedules providing for their respective withdrawal from and inauguration of service within the territory now served by means of the property herein authorized to be sold. It is further

Ordered, That nothing herein shall be construed to be a consent to or approval, by this commission, of any increase in rates or diminution of service within the territory now served by means of the property herein authorized to be sold; nor shall the findings hereinbefore set forth as to value, rates or service be binding upon this commission in any future proceeding involving the subject of rates or service."

No. 2586—In the Matter of the Joint Application of Mary F. Jackson, Trading as the Miami Valley Transit Company, and The Miami Valley Transit Company, a Corporation, for Authority to Sell and Purchase Property. Prayer Granted.

(Dated June 22, 1922.)

This day, it appearing to the commission from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, this matter came on for consideration upon the joint application of Mary F. Jackson, trading as the Miami Valley Transit Company, and the owner and operator of a bus line operating between the city of Norwood and the cities of Loveland and Milford, Ohio, and The Miami Valley Transit Company, a corporation duly organized and existing under and by virtue of the laws of the State of Ohio, asking the consent to and approval, by this commission, of the sale by said first named applicant and the purchase and acquisition by the latter, of all the property, rights and other assets composing said bus line utility.

The commission, being fully advised in the premises, finds from the pleadings and exhibits filed herein and its independent inquiry and investigation thereupon:

That, for purchase and sale purposes, the value of the said property and other assets composing the said Miami Valley Transit Company is not less than the sum of \$22,500,000, and

That the public will, upon the consummation of said proposed sale and purchase of said property, be furnished adequate service for a reasonable and just rate, rental, toll or charge therefor,

and is satisfied that consent and authority for said proposed sale and purchase of such public utility property should be granted. It is, therefore,

Ordered, That the said Mary F. Jackson, trading as the Miami Valley Transit Company, be, and hereby is authorized to sell and convey to The Miami Valley Transit Company, a corporation, all of the property, rights and other assets, including the stock of repair parts, materials and supplies of the value of \$500.00, composing the said public utility owned and operated by her; and said The Miami Valley Transit Company hereby is authorized to purchase and

acquire said property and to pay therefor the agreed consideration of \$22,500.00. It is further

Ordered, That, forthwith upon the exercise of the authority herein granted, said parties file with this commission schedules providing for their respective withdrawal from and inauguration of service within the territory now served by means of said property. It is further

Ordered, That nothing herein shall be construed to be a consent to or approval by this commission of any increase in rates or diminution of service within the territory now served by means of said property, nor shall the findings hereinbefore set forth as to the value of said property, rates and service, or the acquiescence in the passing of said agreed consideration be binding upon this commission in any future proceeding involving rates and/or service.

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No. 2550—In the Matter of the Joint Application of The W.-G. Power Company to Sell and The Ohio Power Company to Purchase the Electric Distributing System of The W.-G. Power Company at Waynesburg and Magnolia, Ohio. Prayer Granted.

(Dated June 19, 1922.)

This day, it appearing to the commission from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, this matter came on for consideration upon the joint application of The W.-G. Power Company and The Ohio Power Company, (corporations duly organized and existing under and by virtue of the laws of the State of Ohio), asking the consent and authority of this commission for the sale by the first, and the purchase and acquisition by the second named applicant of all the physical assets of The W.-G. Power Company, including the complete distribution system at Waynesburg and Magnolia and the transmission line connecting same, all franchises, consumers' contracts and good will but excepting the generating plant and accounts receivable.

The commission being fully advised in the premises, finds from the pleadings and exhibits filed herein and its independent inquiry and investigation thereupon:

That the public will, upon the consummation of said proposed sale and purchase of said property be furnished adequate service for a reasonable and just rate, rental, toll or charge therefor,

and is satisfied that consent and authority for said proposed sale and purchase of such public utility property should be granted. It is, therefore,

Ordered, That said The W.-G. Power Company be, and hereby it is authorized to sell and convey to The Ohio Power Company all of its physical assets, including the complete distribution systems at Waynesburg and Magnolia and the transmission line connecting same, all franchises, consumers' contracts and good will, but excepting the generating plant and accounts receivable; and said The Ohio Power Company hereby is authorized to purchase and acquire said property and assets and, in consideration therefor, to furnish the materials and labor to construct and maintain the pole line and transmission and distribution system to furnish electric service to the plants of The Whitacre and Greer Fireproofing Company, as provided in the agreement by and between the said parties. It is further

Ordered, That, forthwith upon the exercise of the authority herein granted, said parties file with this commission schedules providing for their respective withdrawal from and inauguration of service within the territory now served by means of said property. It is further

Ordered, That nothing herein shall be construed to be a consent to or approval, by this commission, of any increase in rates or diminution of service within the territory now served by means of said property, nor shall the findings hereinbefore set forth as to rates and service be binding upon this commission in any future proceedings involving rates and/or service.

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No. 2557—In the Matter of the Joint Application of The Valley Electric Company to Sell and The Ohio Power Company to Purchase the Electric Generating Station and Distributing System of The Valley Electric Company at Malvern, Ohio. Prayer Granted.

(Dated June 19, 1922.)

This day, it appearing to the commission from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, this matter came on for consideration upon the joint application of The Valley Electric Company and The Ohio Power Company, (corporations duly organized and existing under and by virtue of the laws of the State of Ohio), asking the consent and

authority of this commission for the sale by said first named applicant and the purchase and acquisition by the latter of all the physical assets of said The Valley Electric Company, including the generating station at Malvern, and the real estate upon which it is situated, the complete distributing system at Malvern and vicinity, all franchises, consumers' contracts and good will, but excepting the accounts receivable.

The commission being fully advised in the premises, finds from the pleadings and exhibits filed herein and its independent inquiry and investigation thereupon:

That, for purchase and sale purposes, the value of said physical assets of said The Valley Electric Company is not less than the sum of \$11,000.44, and

That the public will, upon the consummation of said proposed sale and purchase of said property, be furnished adequate service for a just and reasonable rate, toll, charge or rental therefor,

and is satisfied that consent and authority for said proposed sale and purchase of such public utility property should be granted. It is, therefore,

Ordered, That said The Valley Electric Company be, and hereby it is authorized to sell and convey to The Ohio Power Company all of its physical assets, including the generating station at Malvern, Ohio, and the real estate upon which it is situated, the complete distributing system at Malvern and vicinity, all franchises, consumers' contracts and good will, but excepting the accounts receivable; and said The Ohio Power Company hereby is authorized to purchase and acquire said property and assets and to pay therefor the agreed consideration of eleven thousand dollars, as provided in the agreement by and between said parties. It is further

Ordered, That, forthwith upon the exercise of the authority herein granted, said parties file with this commission schedules providing for their respective withdrawal from and inauguration of service within the territory now served by means of said property. It is further

Ordered, That nothing herein shall be construed to be a consent to or approval, by this commission, of any increase in rates or diminution of service within the territory now served by means of said property, nor shall the findings hereinbefore set forth as to the value of said property, rates and service, or the acquiescence in the passing of said agreed consideration be binding upon this commission in any future proceeding involving rates and/or service.

ATTORNEY GENERAL

If the Taxes and Assessments Upon Delinquent Lands Have Been Paid, but the Assessments Have not Been Paid, the Procedure Outlined in Section 5716, General Code, is not to be Followed. The State's Claim for Taxes is the Essential Thing, and Where the State Has no Such Claim for Taxes, it Has no Lien for Assessments.—The County Treasurer is Authorized to Make Employment, Under the Supervision of the Prosecuting Attorney, to Make an Examination of the Records for the Purpose of Bringing Foreclosure Proceedings to Enforce Lien for Delinquent Taxes. Payment for Such Services Should be Made Out of the County Treasury on the Warrant of the County Auditor and Allowance by the County Commissioners. If the Court Then Orders That an Abstract be Made and Orders the Cost Thereof Taxed as Costs, the Abstract Made May be Furnished and the General County Fund Reimbursed Out of the Costs When Collected.—The Greater Part of the Services Necessary in Such Actions Will be Such Services as Can and Should be Performed by Regular Deputies and Assistants of the Prosecuting Attorney.

No. 3238—(Opinion Dated June 20, 1922.)

Hon. John R. King, Prosecuting Attorney, Columbus, Ohio.

Dear Sir: Your letter of recent date requests the advice of this department as follows:

“Under Section 5722 it is provided that the state, by the attorney general, may bring its action for foreclosure of any delinquent lands upon which the taxes, assessments, penalties and interest have not been paid for a period of four years, in the county in which the land therein described is situated, etc. Assuming, however, that the prosecuting attorneys of the several counties, in which lands are situated upon which taxes, assessments, penalties and interest have not been paid for a period of four years, will be designated by the attorney general to collect such taxes, assessments, penalties and interest, and anticipating the necessity for bringing in this county some four hundred suits as provided in Sections 5704 to 5727 of the General Code, we have several questions which we desire to submit to you for decision, and which are of general interest throughout the state.

1. Throughout the act the words 'taxes, assessments, interest and penalties,' are referred to. Is it the duty of the county auditor to certify to the state auditor, under Section 5718, all tracts of land, lots, etc., upon which assessments alone have been unpaid for four consecutive years? By assessments we mean such as street assessments, etc., which are unpaid, but the general taxes have been paid and concerning which taxes there are no delinquencies. In other words, must there be a delinquency in the payment of the general taxes charged against such real estate before the auditor is required to certify the delinquency to the auditor of state?

2. It is apparent that a search of the records must be made for parties interested in the premises. Section 5713 provides that there shall be taxed by the court as costs in the foreclosure proceedings instituted on the certification 'the cost of an abstract or certificate of title to the property described in said certification, if the same be required by the court, to be paid into the general fund of the county treasurer.' The lien for taxes, being prior to all other liens except costs, it might be said that no other parties interested in the lands, save the owners thereof, are necessary parties, but it seems to us that in order to convey a good title to the premises, all parties of interest must be known and joined as parties, the same as the practice which now obtains in foreclosure proceedings on mortgages or other liens. Few purchasers could be found who could or would pay anything for the premises unless all parties interested were brought before the court and their rights determined therein. Therefore, it seems necessary to have the abstract prior to instituting the suit. Is there authority to employ an abstractor prior to bringing suit? If so, by whom may he be employed and from whence will he be paid?"

This department is unable to agree with the assumption in the first paragraph of your letter to the effect that Section 5722 of the General Code governs all the foreclosure proceedings provided for by Section 5718.

Enclosed will be found copies of several opinions of this office dealing with these statutes, one of which you will observe is responsive to this question.

The answer to your first question is to be sought for throughout the whole chapter of which the sections mentioned by you are a part. Section 5705 of the General Code provides as follows:

"Delinquent lands as defined in this act shall mean all lands upon which the taxes, assessments and penalties have not been paid for two consecutive semi-annual tax paying periods."

This section leaves the exact answer to your question some-

what in doubt. The phrase "taxes, assessments and penalties" occurring therein can be read either distributively or cumulatively. However, Section 5706 and succeeding sections, which was amended 109 O. L., 247, and which regulates the rates of advertising, contains the following sentence:

"A greater sum than one-half of the taxes and penalties, due on any tract, lot or part of lot, shall not be allowed for advertising such tract, lot or part of lot."

This sentence is followed by the following:

"Such property shall not be published in a list as delinquent, if the taxes, assessments, and penalty thereon have been paid before the twentieth day of December."

So that it is apparent that the word "taxes" as used in the first of these two sentences does not include assessments; hence, it would seem that if all taxes and penalties thereon had been paid on a given tract or lot of land, but some special assessments charged thereon were unpaid, the section fails to provide for any limitation for advertising.

Again, Section 5706 enacted as the third section of the original act, and possibly repealed by implication when Section 5706, as partially quoted above, was enacted 108 O. L., Pt. 1, p. 405, uses the words "taxes and penalties charged thereon agreeable to law," although the phrase "taxes, assessments and penalties" is used in the same section.

Section 5708, being Section 5 of the original act, provides as follows:

"Before advertising such list of delinquent lands and lots, the county auditor shall compare it with the duplicate in the office of the county treasurer, and strike therefrom all lands or town lots upon which the taxes, assessments and penalty of the preceding year, with the taxes and assessments of the current year, have been paid, and advertise the remainder as provided in this chapter."

From this language it would seem reasonably inferable that the non-payment of assessments only would make land delinquent. So that thus far we have intimations in both directions.

Section 5712, which is somewhat lengthy, provides for the making of the original delinquent land tax certificate

"for each tract of land * * * on which the taxes, assessments

and penalty have not been paid, describing * * * the amount of taxes, assessments and penalty thereon due and unpaid."

Here again we have the same question.

Then comes Section 5713 which provides as follows:

"The state shall have a first and best lien on the premises described in said certification, for the amount of taxes, assessments and penalty, together with interest thereon at the rate of eight per cent per annum, from the date of delinquency to the date of redemption thereof, and the additional charge of twenty-five cents for the making of said certification, and sixty cents for advertising. If the taxes have not been paid for four consecutive years, the state shall have the right to institute foreclosure proceedings thereon, in the same manner as is now or hereafter may be provided by law, for foreclosure of mortgages on land in this state, and there shall be taxed by the court as costs in the foreclosure proceedings instituted on said certification, the cost of an abstract or certificate of title to the property described in said certification, if the same be required by the court, to be paid into the general fund of the county treasurer."

Observe here the significant change of expression. The lien covers "the amount of taxes, assessments and penalty" with interest, but the right of foreclosure is predicated upon the non-payment of taxes only, and it is impossible to suppose that the legislature intended to use this word in a sense broad enough to include all the other words employed in the preceding sentence.

Section 5717 of the General Code provides as follows:

"No proceedings in foreclosure, under this act, shall be instituted on delinquent lands, unless the taxes, assessments, penalties and interest have not been paid for four consecutive years."

Here again we have a very ambiguous expression. If this enumeration of unpaid charges is to be read cumulatively, then if the assessments were paid but the taxes were not, no proceedings in foreclosure could be instituted, which would be a direct contradiction of Section 5713. But if the clause be read distributively, the same consequence follows. In other words, we have in Section 5713 a declaration of the right to institute foreclosure proceedings if the taxes have not been paid for four years; and in Section 5717 the declaration that no proceedings shall be instituted unless the taxes, assessments, penalties and interest have not been paid for four years. No way has been found to reconcile those

two statements taken literally. But it is possible to reconcile them if they are read as follows:

"If the taxes have not been paid for four years there shall be a right of foreclosure, but no proceedings in foreclosure shall be instituted unless the taxes, (together with the other charges carried on the duplicate against the delinquent lands) have not been paid for four consecutive years."

Then comes Section 5718 which is the section mentioned by you. It provides in part as follows:

"It shall be the duty of the county auditor to file with the auditor of state, a certificate of each delinquent tract of land, city or town lot, at the expiration of four years, upon which the taxes, assessments, penalties and interest have not been paid for four consecutive years."

This section, it will be observed, merely follows one of the forms of expression which has been used in the preceding sections.

In connection with all these sections, Sections 5678 and 5679 may be referred to. It will not be necessary to quote these sections. They provide for the charging of the penalty on account of delinquency in the payment of real estate taxes. They contain no reference to assessments.

Section 3892 of the General Code is one of the sections dealing with special assessments, and, generally speaking, governs such assessments made by municipal corporations. It provides as follows:

"When any special assessment is made, has been confirmed by council, and bonds, notes or certificates of indebtedness of the corporation are issued in anticipation of the collection thereof, the clerk of the council, on or before the second Monday in September, each year, shall certify such assessment to the county auditor, stating the amounts and the time of payments. The county auditor shall place the assessment upon the tax list in accordance therewith and the county treasurer shall collect it in the same manner as other taxes are collected, and when collected pay such assessment to the treasurer of the corporation, to be by him applied to the payment of such bonds, notes or certificates of indebtedness and interest thereon, and for no other purpose. For the purpose of enforcing such collection, the county treasurer shall have the same power and authority as allowed by law for the collection of state and county taxes."

This section is older in point of time than the sections immediately under examination. In and of itself it does not create

a lien in favor of the municipal corporation or of the state. But this is provided for by Section 3897 of the General Code, the first sentence of which provides as follows:

“Special assessments shall be payable by the owners of the property assessed personally, by the time stipulated in the ordinance providing therefor, and shall be a lien from the date of the assessment upon the respective lots or parcels of land assessed.”

This lien, however, is a lien in favor of the municipal corporation. It is not the state's lien, while the sections immediately under examination, and particularly Section 5713 above quoted, confer a lien on the state for the assessments as well as the taxes. But where the taxes have been paid one of the questions which arise in connection with your inquiry is whether the state's lien provided for by Section 5713 attaches on account of the non-payment of assessments. The presumption would be to the contrary, as there would be no reason for giving the state a lien for the purpose of collecting a charge which is primarily a personal liability in favor of a municipal corporation, though vested for collection purposes in the county treasurer. *Railway Co. v. Bellaire*, 67 O. S., 297.

Similar observations might be made with respect to other assessment statutes, but it is not believed to be necessary to pursue the subject further. The purpose of the certification to the auditor of state and the proceedings under Section 5718 is to secure the foreclosure of the lien. Section 5713 shows that this purpose can be accomplished only “if the taxes have not been paid for four consecutive years.” For this reason principally, and for others which have perhaps been suggested in the foregoing discussion, it is the opinion of this department that the state's claim for taxes is the essential thing, and where the state has no such claim for taxes, it has no lien for assessments. So that if the taxes and penalties have been paid, but the assessments have not been paid, the procedure outlined in Section 5718 of the General Code is not to be followed.

Your second question it is believed must be answered by a consideration of Section 5713 which has been quoted, and which contains the provision stated in your question. It will be observed that the cost of an abstract or certificate of title can only be taxed as costs in a foreclosure proceeding if the same is required by the court; but that when so required and taxed, the costs when recovered are to be paid into what is designated as “the general fund

of the county treasurer" by which it is supposed the legislature meant the general county fund. The inference would then be that in cases in which the court had required the preparation of an abstract, the county treasurer who is the proper party plaintiff would be authorized to procure preparation of an abstract and to advance compensation to the abstractor out of the general county fund as an expense of his office, securing reimbursement from the costs in the case. Your question, however, is as to whether or not the county treasurer is authorized to employ an abstractor for the purpose of preparing foreclosure proceedings and ascertaining proper parties, before such actions are brought, and to pay for the services of the abstractor out of the general county funds in advance of any order or requirement of the court.

No express statutory authority to make this expenditure of public moneys has been found. This lack of express statutory authority, however, does not constitute a sufficient basis for final answer to your question; for we still have to deal with the question as to whether the power and indeed the duty of the county treasurer to bring a foreclosure proceeding and make the proper parties carries with it by implication the authority to incur this expense out of public moneys.

At the outset, it is to be observed that whatever implied power is found must reside in the county treasurer upon whom the duty of filing the petition is imposed by Section 5718 of the General Code. It is true, as has been held in one of the other opinions, copies of which are herewith enclosed, that the prosecuting attorney must represent the county treasurer in such actions, and that in practice the burden of ascertaining who are proper parties, etc., would be most appropriately cast upon the prosecuting attorney. That is to say, the examination of the title for the purpose of ascertaining what persons are shown thereby to have some color of claim to an interest in the premises which are the subject of the foreclosure action is a legal problem. However, the inference from Section 5713 is that the county treasurer is to make the expenditure in the first instance when the court requires the preparation of an abstract. So that it is reasonable to assume that whatever implied power to encumber the public moneys may be found would, as stated, have to reside in the county treasurer, though the actual expense might be incurred under the direction of the prosecuting attorney.

If such implied power exists, it must be derived from the express power to bring suit. It has been held that an express

power to sue and be sued gives rise to an implied power to employ counsel and pay him compensation out of public funds where the circumstances were such that the statutes did not provide for furnishing legal counsel. *Board of Education v. Board of Education*, 4 O., App. 165. In the present case, of course, the law furnishes legal counsel for the county treasurer, but it also requires him to bring a suit of this character and to make the necessary parties without providing an express reimbursement of the expenses necessarily incurred in ascertaining who are the proper parties. Formerly, of course, the county treasurer would have brought such action as this in a sense in his own right, being entitled to retain for his own use the collection fees. Since the passage of the county officers' salary law, however, fees are for the use of the county, and the law, Sections 2977 to 3004 inclusive, contains no express authority to receive reimbursement for expenses, save with respect to the sheriff and the prosecuting attorney.

We have then this situation: The county treasurer is required to bring a foreclosure proceeding making the necessary parties. No part of the proceeds of a successful action will inure to his personal advantage; such fees as he may receive for collection will inure to the benefit of the county. In order to prepare his cases properly it is necessary for him to have an abstract or a search of the records made. The expense of such service is not properly chargeable to the expense fund of the prosecuting attorney because in the event that an allowance of such expense is made as costs, it inures to the benefit of the county treasury. Therefore, it must either be held that there is no authority at all for incurring the expense, in the absence of an order of court made after the action is brought, or it must be held that the power to charge the public funds with this expense resides with the county treasurer by necessary implication. Having regard to the consequences of the two possible interpretations, it is the opinion of this department that the implied power exists, and that the county treasurer is authorized to make the employment (though in practice of course the work should be done under the supervision of the prosecuting attorney); and that payment for such service should be made out of the county treasury on the warrant of the county auditor and the allowance of the county commissioners as a claim against the county. Then if the court requires the abstract to be made and orders the cost thereof to be taxed in the costs of the case, the abstract already made may be furnished under such

order of the court, and the general county fund may be reimbursed out of the costs when collected.

It may be that there is some doubt as to the propriety of the procedure just suggested in all of its details. But there is in the opinion of this department no doubt that the treasurer whose duty it is to bring the suit and to ascertain for the use of the prosecuting attorney all the facts upon which the prosecuting attorney must base his action may by his official force, secured and established in the regular way, discharge these duties. In other words, it must be conceded that the treasurer would be in the line of his duty if he should personally by examination of records or personal interview ascertain the facts on the basis of which the legal conclusion as to who would be the proper parties would be predicated. What he could lawfully do himself he could delegate to a deputy, clerk or assistant. Therefore, it seems to follow that by designating one of his regular deputies, clerks or assistants to search the records, etc., or, within the allowance made by the county commissioners, by appointing a special deputy, clerk or assistant to do this work, the treasurer could secure whatever information might be necessary in a given case. This would seem to be an unquestionably lawful procedure for ascertaining the facts which have to be disclosed. It is perhaps a little less convenient than the procedure first above outlined, in that ordinarily, at least, the compensation of deputies, assistants or other employes of a county office is a salary payable monthly (see Section 2981, General Code), though it is not clear that this is required. So that it might be somewhat impracticable to determine the exact cost of making an abstract by the use of a regular county employe in the cases in which by subsequent order of court the cost of making such abstract is allowed as a part of the costs of a case. This may not, however, afford in practice as much difficulty as may at first sight appear; while it is rather clear that the method now under discussion has the merit of unquestioned legality.

It may be added that from a strictly technical point of view a distinction might be drawn between the service of ascertaining the facts through a search of the records, etc., and the preparation of a formal abstract. In the first place, it seems doubtful to this department that a formal abstract would be necessary in all cases, while it is reasonably clear that some slight service of the former character would be necessary in any case. In the second place, the preparation and delivery of an abstract is not an unmixed

personal service, inasmuch as something has to be prepared and delivered, whereas services of the former character are clearly the same kind of services as would be rendered by any assistant or deputy in a county office. It has therefore seemed impracticable to this department to attempt to draw a hard and fast line and to say that all services that might conceivably be required or deemed necessary are as a matter of law in the category of such services as must be provided for through the employment of deputies, assistants, etc., under the county officers' salary law. It does seem clear, however, that a considerable proportion—perhaps the greater part—of the services that will in practice be found necessary in order to enable the prosecuting attorney to make the proper parties, will be such services as can, and therefore should, be performed by regular deputies and assistants.

SUPREME COURT

SYLLABI OF REPORTED CASES

No. 17030—The Ohio Electric Railway Company v. The United States Express Company. Error to the Court of Appeals of Hamilton county. Robinson, J.

1. The adoption of the averments of a pleading is not an adoption of the prayer thereof.

2. Where the jurisdiction of the person is dependent upon the language of a pleading, the pleading will be construed strictly and its scope will not be extended beyond its clear expression.

3. A defendant appearing only for the purpose of objecting to the jurisdiction, upon the overruling of such objection is not bound to rely at his peril solely upon his exception thereto, but may make full defense without waiving such objection.

4. The statutes of Ohio do not authorize the filing of an amendment to a petition, which substantially changes the claim of the petitioner, and the rendering of judgment in pursuance thereof against a defendant without service of summons, waiver or entry of appearance, is reversible error.

Judgment affirmed.

Johnson, Hough and Matthias, JJ., concur.

No. 17131—Helen F. Bennett v. William A. Fleming et al. Error to the Court of Appeals of Pickaway county. Marshall, C. J.

1. The code provisions of paragraphs 5 and 8 of Section 11631, General Code, Section 11603, General Code, and Section 122270, General Code, are cumulative and in addition to the right of an infant to impeach a judgment for fraud after arriving at majority, and such a cause based upon proper grounds can be prosecuted by original suit begun in the court where the decree complained of was entered.

2. Persons having a remote, contingent or expectant interest in realty are bound by the judgment rendered in an action concerning the property, although not made parties to the suit,

if the holder of the first estate of inheritance is a party. Estates limited over to persons not in being are represented by the living owner of the first estate of inheritance, so that a decree in a suit to which the first holder, a living person, is made a party will conclude the rights of after-born remaindermen.

3. In all suits in which infants are parties defendants it is the duty of the court to carefully safeguard the rights and interests of such infants, and it is also the duty of a guardian ad litem to ascertain the legal and equitable rights of his ward and to bring those rights to the attention of the court for consideration and decision.

Judgment reversed.

Johnson, Hough and Wanamaker, JJ., concur.

No. 17218—The State, ex rel. Methodist Children's Home Association of Worthington, Ohio, v. The Board of Education of The Worthington Village School District of Franklin County, Ohio. In Mandamus.

Matthias, J.

1. The amendment of an existing law defining the duty of a public board or official by the substitution of the word "may" for the word "shall," manifests a clear intent and purpose of the legislature to make the action therein referred to optional and permissive instead of mandatory.

2. A writ of mandamus may issue only to require the performance of an act specially enjoined by law, and may not be employed to control the discretion lodged by statute in a public board or officer.

3. The board of education of a district wherein is located a private children's home is not required by the provisions of Section 7681, General Code, to admit to the schools of such district children who are inmates thereof who are not the children, wards or apprentices of actual residents of such district.

Writ refused.

Johnson, Hough, Robinson and Jones, JJ., concur. Marshall, C. J., dissents.

No. 17367—The J. G. McCrory Ohio Co. v. Cornelia B. Rabbits et al. Error to the Court of Appeals of Clark county.

Jones, J.

Lessors on April 8, 1914, leased premises for a term of 25 years, beginning September 1, 1918, at a greatly increased rental. The lease contained covenants for rebuilding and for subletting and assignment with the written consent of lessors; it also contained a clause that no obligation to rebuild in the event of fire should "attach pending the beginning of occupancy on the part of lessee." The lessee never actually occupied the demised premises, but with the written consent of lessors sublet them to a tenant who occupied them until destroyed by fire on January 23, 1921:

Held: The parties, by use of the quoted clause, had in contemplation the time of occupancy and not the personal occupancy of the lessee; and the occupancy by a tenant of the lessee, with the lessors' written consent, does not release the lessors from their obligation to rebuild.

Judgment reversed.

Marshall, C. J., Hough, Wanamaker, Robinson and Matthias, JJ., concur. Johnson, J., took no part in the consideration or decision of the case.

No. 17394—State of Ohio v. Harry Pape.

No. 17395—State of Ohio v. L. B. Heine.

No. 17597—State of Ohio v. Bert Friend.

Error to the Court of Appeals of Clermont County.

Matthias, J.

1. By virtue of the provisions of Sections 4536 and 3539, General Code, the mayor of a municipality has jurisdiction coextensive with the county in prosecutions under Section 13195, General Code, and the mayor of a municipal corporation embracing territory in more than one county has jurisdiction in such cases coextensive with each of the counties in which any part of such territory is located.

2. The judgment of the mayor of such a municipality is not invalid though the hearing was had and judgment rendered in a portion of the municipality which is not within the

county wherein the offense is alleged to have been committed.

3. For the purposes of jurisdiction the mayor of such municipality is a magistrate in the county where the offense is alleged to have been committed, and a proceeding in error from his judgment in such case can be prosecuted in the court of common pleas of no other county.

Judgments reversed.

Marshall, C. J., Johnson, Hough, Wanamaker, Robinson and Jones, JJ., concur.

No. 17398—The State, ex rel. John M. Hoel, Prosecuting Attorney, v. Dan H. Brown. Error to the Court of Appeals of Darke county.

Wanamaker, J.

1. In 1912 the people of Ohio adopted, as a part of the Constitution, Section 38, Article II, in which, among other things, it is written: "Laws shall be passed providing for the prompt removal from office, upon complaint and hearing, of all officers," etc.

2. By this section they plainly provided that such removal should be made only "upon complaint and hearing."

3. What the constitution grants, no statute may take away.

4. Section 2715, General Code, passed by the general assembly prior to 1912, by virtue of the Schedule of the Constitution and the inconsistency and conflict between such statute and Section 38, Article II, is repealed.

Judgment affirmed.

Marshall, C. J., Johnson, Hough, Robinson, Jones and Matthias, JJ., concur.

No. 17409—August Schario v. The State of Ohio. Error to the Court of Appeals of Stark County.

Wanamaker, J.

1. The language of the law, constitutional or statute, should be given the ordinary and usual meaning of the words and phrases employed.

2. Sections 6212-13 to 6212-20, providing among other things that "The case shall be heard by such reviewing court within not more than thirty court days after filing such petition in error," does not include within its terms the final consideration, determination, and judgment upon such petition in error, and the record therein.

3. So much of said act as reads "A petition in error * * * filed in any court to reverse a conviction for a violation of this act, or to reverse a judgment affirming such conviction * * * shall be heard by such reviewing court within not more than thirty court days after filing such petition in error" is a clear invasion of the jurisdiction of the court of appeals and the supreme court, as fixed by the constitution, and therefore, being in conflict with the constitution, is null and void.

4. An act of the general assembly attempting to peremptorily prescribe the time within which any court shall hear or determine a matter properly within its jurisdiction is a legislative invasion of judicial power, and, as such, is unreasonable and unconstitutional, and therefore null and void.

Judgment reversed.

Johnson, Hough, Robinson and Mathias, JJ., concur. Jones, J., concurs in the judgment on the authority of *James v. West*, 67 Ohio St., 28, on the ground that the statute is directory only. If the statute be construed as mandatory, as it has been, he concurs in the syllabus holding that the statute is unconstitutional. Marshall, C. J., dissents.

No. 17509—*The State, ex rel. Sherard M. Johnson, City Solicitor, v. J. Earl Chandler, Auditor of City of Portsmouth, Ohio. In Mandamus.* Marshall, C. J.

1. The ordinances, resolutions, measures and proceedings mentioned in Section 23 of the Griswold Act (109 O. L., 336-348) refer to legislative acts, and the word "proceedings" has no reference to administrative acts necessary to be performed in executing the legislative will.

2. Where all legislation of a municipality necessary for street improvements has been fully completed before January 1, 1922, such legislation including authorization of bonds in anticipation of assessments upon abutting property to pay for such improvements, but such bonds are not actually sold and delivered until after January 1, 1922, the provisions of Section 6 of the Griswold Act, Section 2295-9, General Code, do not apply, and, where the legislation so provides, such bonds may be made to mature

more than ten years after the date of execution and delivery.

Writ allowed.

Johnson, Hough, Wanamaker, and Jones, JJ., concur.

No. 17152—*Henrietta Thiessen et al. v. Ida Moore et al. Error to the Court of Appeals of Lorain county.* Robinson, J.

1. The consideration paid for a conveyance of real estate determines its course of descent, and the recital in the deed of conveyance of the payment of the consideration is "operative words" within the meaning and intent of the declaration of this court in the case of *Shehy v. Cunningham*, 81 Ohio St., 289, and for the purpose of determining the course of descent is conclusive.

2. In a divorce, alimony, custody, support and maintenance proceeding the court is without power to make a decree with reference to the maintenance of minor children beyond the date when such children shall arrive at their majority, and a decree which purposes and attempts to direct the course of the succession to the title of real estate after the death of the parents is in that respect ultra vires and void and may be attacked in a collateral proceeding.

3. A quitclaim deed attempting to release a right to inherit, which right is neither vested nor contingent, has no subject-matter on which the instrument can operate, and is void.

Affirmed as to the fifty-four acres. Reversed as to the two acres.

Johnson, Hough, Jones and Mathias, JJ., concur. Marshall, C. J., dissents.

No. 17165—*Meyer J. Woodruff v. Arnold Paschen. Error to the Court of Appeals of Lucas county.* Hough, J.

1. The essential elements of fact involved in an action for damages for malicious prosecution are malice and the presence, or absence, or probable cause.

2. Where a petition charges not only the institution but the maintenance of a malicious prosecution, the defense of "advice of counsel" is a complete defense only when it covers

the time from the institution to the final disposition of the prosecution.

Judgment affirmed.

Marshall, C. J., Johnson, Robinson, Jones and Matthias, JJ., concur, Wanamaker, J., dissents.

No. 17179—Charles O. Black and Samuel Black v. Sylvania Producing Co. Error to the Court of Appeals of Monroe county.

Wanamaker, J.

1. The right of partition, either under the statute or in equity, is remedial in its nature, and should be liberally construed.

2. A leasehold interest for oil and gas, with the usual rights and appurtenances necessary to development of the lands and the production of such oil and gas, is partitionable either under the statute or in this case in equity.

Judgment affirmed.

Marshall, C. J., Johnson, Jones and Matthias, JJ., concur. Robinson, J., took no part in the consideration or decision of the case.

No. 17232—The State, ex rel. Edward C. Stanton, v. Frank T. Andrews, et al. Error to the Court of Appeals of Cuyahoga county.

Hough, J.

1. Sections 2323 and 5638, General Code, are sections of general limitation on the power of county commissioners to levy a tax, appropriate money, or issue bonds for the purpose of building county buildings, and are subject to a strict construction for the purpose of confining their operation within the limitations expressed.

2. A statute in order to be held an exception to the general provisions of another conferring power and limitation of power on an administrative board, must be couched in language so clear and unambiguous as to be free from doubt as to the intent of the legislature in declaring it to be an exception.

3. The language employed by the legislature in Section 2434, General Code, authorizing county commissioners to borrow money for the erection of a county jail, may not be construed as an exception to the limitation on its powers provided in Sections 2323 and 5638, General Code, but must be construed in *pari materia* with those sections.

4. When the voters of a county sanction the policy of building a county jail by voting a bond issue in an amount certain, the policy adopted is one involving the expenditure of no greater sum than that approved, and a building commission is without power to contract for such building under its adopted policy and plan involving an estimated expenditure of an amount in excess of that sanctioned by the voters.

Judgment reversed.

Marshall, C. J., Johnson, Wanamaker, Robinson, Jones and Matthias, JJ., concur.

No. 17294—The Village of Leipsic, et al. v. Jacob G. Wagner. Error to the Court of Appeals of Putnam county.

Jones, J.

Sections 3812 and 3842-1 et seq., General Code, so far as they relate to the subject of street-lighting improvement, are in *pari materia* and are not irreconcilable; they furnish concurrent methods for initiating such improvement, and, since there was no express repeal of the former statute in that respect, there was no repeal thereof by implication.

Judgment reversed.

Johnson, Hough, Wanamaker and Matthias, JJ., concur. Marshall, C. J., dissents.

No. 17419—Richard H. Shafer et al. v. Henry P. Streicher, a taxpayer, etc. Error to the Court of Appeals of Franklin county.

Robinson, J.

The provisions of Section 1206, General Code, by apt language in that section contained, are applicable to improvements instituted by a resolution of the commissioners of a county or the trustees of a township, and there is nothing in that Section, or any other sections of Part First, Title III, Division II, Chapter 18 of the General Code, entitled State Highway Department, which makes them applicable to resurfacing or reconstructing conducted by the state highway commissioner under Section 1224, General Code.

Judgment reversed.

Marshall, C. J., Johnson, Hough, Wanamaker, Jones and Matthias, JJ., concur.

No. 17482—Edward D. Cullen as Vice Mayor of the city of Toledo, Ohio, etc., v. The State, ex rel. city of Toledo, etc. Error to the Court of Appeals of Lucas county.

Robinson, J.

A writ of mandamus will not issue to compel the observance of law generally, but will be confined to commanding the performance of specific acts specially enjoined by law to be performed.

Judgment reversed.

Marshall, C. J., Johnson, Hough, Jones and Matthias, JJ., concur, Wanamaker, J., dissents.
Marshall, C. J.

No. 16916—James Morton v. State of Ohio. Error to the Court of Appeals of Cuyahoga county.

Robinson, J.

1. Section 13668, General Code, enacted March 21, 1917 (107 O. L., 451), affords neither "equal protection and benefit" under Article I, Section 2 of the Constitution of Ohio, nor "equal protection of the laws" under Section 1 of the 14th Amendment of the Constitution of the United States, and being violative of both the State and Federal Constitution is void.

2. The repealing clause of the act (Section 2; 107 O. L., 452) neither carries an expressed intention to repeal the prior law without regard to the substitute, nor does such intention clearly appear from the substitute section, and is, therefore, by reason of the unconstitutionality of the substitute section inoperative. (State, ex rel. Pogue, v. Groom, 91 Ohio St., 1; and State, ex rel. Walton, v. Edmondson, Auditor of Hamilton Coun-

ty, State, ex rel. Brennan, Treasurer of State, v. Benham, Treasurer of Franklin County, and State, ex rel. Grant, v. Sayre, Auditor of Franklin County, 89 Ohio St., 351, approved and followed.)

Judgment reversed.

Hough, Jones and Matthias, JJ., concur. Johnson, J., concurs in first proposition of the syllabus, but not in the judgment. Wanamaker, J., dissents, but concurs in first proposition of the syllabus. Marshall, C. J., dissents.

No. 17329—Thomas H. Wells, Jr., v. Stasia W. Wells. Error to the Court of Appeals of Trumbull county.
Robinson, J.

1. The limitation of time provided by Section 12270, General Code, is applicable to divorce proceedings, and the seventy days begins to run from the date of the entry of the decree and not from the date of the overruling of a motion for a new trial. (Young v. Shallenberger, 53 Ohio St., 291, Dowty v. Pepple, 58, Ohio St., 395, and Craig v. Welply, 104 Ohio St., 312, approved and followed.)

2. Parties to the action can not by formal entry of appearance or by agreement extend the limitation of time provided in Section 12270, General Code.

3. A motion for a new trial affects the time when the limitation begins to run only in those cases where the motion for a new trial prevents the entry of a judgment.

Judgment reversed.

Johnson, Hough, Wanamaker, Jones and Matthias, JJ., concur. Marshall, C. J. dissents.

SECRETARY OF STATE

NEW CORPORATIONS

The Bubeck Bros. Co., Cleveland, \$100,000. George A. Bubeck, Cary R. Alburn, Otto C. Bubeck, A. P. Mead, M. R. Cooper.

The Ohio Lumber Co., Cleveland, \$15,000. Bert D. Glick, E. M. Ackerman, H. J. Tabor, J. C. Luchti, Harry F. Glick.

The Guist Land Co., Murray City, \$10,000. A. F. White, F. M. Murphy, J. J. Hogan, William Morgan, Charles Murphy.

The C. I. Cartwright Co., Cleveland, \$10,000. C. I. Cartwright, J. H. LaCroix, B. Brown, L. T. Hanson, Emery Smith.

The Brookpart Village Land Co., Cleveland, \$500. J. A. Elden, W. R. Ricks, R. E. Bartholomeu, I. J. Clark, G. F. Williams.

The Columbia Music Co., Lakewood, \$1,000. Walter W. DuBreinl, Anna E. DuBreinl, Mortimer L. Steiner, Donald C. Rolli, Ernest L. Coopson.

The Clermont County Oil & Gas Co., Felicity, \$500. C. H. Mason, Benjamin Wayt, Lewis Urbansky, T. J. Donald, Roy D. Goodwin.

The Franklin Gasoline Service Co., Columbus, \$15,000. Thomas MacKay, Joseph Toepfner, Paul Meister, Chas. A. Schwenker, Charles S. M. Krumm.

The Reo Motor Sales Co., Canton, \$100,000. Presley Campbell, F. X. Volzer, R. L. Schumacher, W. S. Ruff, C. R. King.

The National Assurance Co., Cleveland, \$125,000. U. G. Denman, A. R. Smith, H. P. Bowers, T. J. Osborne, C. T. Kirkbride.

The Huebner Tire & Supply Co., Toldo, \$10,000. Rudolph Huebner, Hattie L. Huebner, Henry E. Huebner, Lillie A. Huebner, Catharine Huebner.

The Cincinnati Motor Transportation Co., Cincinnati, \$25,000. F. I. Coleman, John N. Gatch, Loren G. Gatch, Carl B. Hathaway, J. A. Brett, Jr.

The Display Publishing Co., Cincinnati, \$10,000. H. C. Menefee, Nathan Silverblatt, Oliver G. Bailey, Charles M. Price, Christian W. Tie-man.

The Ohio Cities Radio Co., Cincinnati, \$50,000. Robert J. O'Brien, Eugene B. Sullivan, Joseph Kolb, Samuel E. Cornish, G. E. Pinney.

The Lake Cliff Realty Co., Cleveland, \$10,000. Sydney A. Davies, Elise F. Peterson, Isabell C. Garvey, Fred S. Jones, J. W. Wilson.

The American Railway Motor Car Co., Elyria, \$500. A. D. Bowen, J. Z. Birdsall, D. A. Glover, L. F. Bowell, L. B. Fauver.

The Aemelia Realty Co., E. Cleveland, \$5,000. John C. Eby, Wilhelm Dietrich, Joseph C. Perkins, Margarit Kern, Victor Potrecz.

The Usona Radio Co., Toledo, \$10,000. Clarence D. Williams, Howard M. Price, Donald B. Stratten, J. W. B. Foley, H. W. Gardner.

The Truitt Office Equipment Co., Cincinnati, \$2,500. Curtiss H. Truitt, W. E. Thompson, Oscar Wm. Schmidt, Rudolph C. Schmidt, L. V. DuBois.

The Robert Tailoring Co., Cincinnati, \$10,000. David M. Wash, Nathan Schechter, Sam Warner, Eugene Adler, Wm. W. Williams.

The Rockside Realty Co., Cleveland, \$350,000. W. I. Huber, E. W. Livensparger, A. A. Mosier, Paul Potter, Phelps Crum.

The Miami Bus and Transportation Co., Dayton, \$500. John H. Brooks, Robert A. Kennedy, A. L. Riner, P. Elton McMillen, H. A. Ralls.

The Kurz-Kasch Limited Co., Dayton, \$120,000. C. A. Kurz, Jr., Juliet D. Kurz, Sam Kress, Harry H. Prugh, David I. Prugh.

The Tiffin & Fostoria Railway Co., Tiffin, \$1,750. C. F. M. Niles, S. B. Sneath, R. R. Hayes, Justice Wilson, Walter G. Kirkbride.

The Inter-State Railway Supply Co., Cleveland, \$500. C. M. Horn, Charles Follett, J. W. Eckelberry, Fred J. Perkins, J. R. Gates.

The J. T. Tractor Co., Cleveland, \$500. Charles K. Arter, Charles Follett, Neil P. Beall, John W. Eckelberry, Orville Smith.

The River Realty Co., Cleveland, \$600. Beatrice F. Rawson, F. M. Pritts, R. L. Kornfeld, Chas. M. Knight, G. J. Kuehn.

PUBLIC UTILITIES COMMISSION

No. 2367—In the Matter of the Joint Petition of The Ohio Bell Telephone Company and The Ohio State Telephone Company for the Consent of The Public Utilities Commission of Ohio to and their Approval of the Consolidation of Said Two Companies Under the Name of The Ohio Bell Telephone Company. Supplement Order Fixing and Prescribing Rates for Unified Service in Washington C. H., Exchange Area.

(Dated July 3, 1922.)

This day, after full hearing, due notice of the time and place of which was given to all parties in interest, this matter came on for consideration upon the application of The Ohio Bell Telephone Company for an order fixing and determining the rates to be charged for unified service within its Washington, C. H., Ohio, exchange area; and the record made upon said hearing.

The Commission, having made an independent investigation of the company's property and books, and taking into consideration the testimony and exhibits offered at said hearing aforesaid, and being fully advised in the premises, finds:

That, upon the unification of its property in said exchange area, the reproduction and present values of the property of The Ohio Bell Telephone Company used and useful for the furnishing of local exchange service in the Washington C. H., Ohio, exchange area, (consisting of the territory in and about Washington C. H., Jeffersonville, New Holland, Milledgeville and Bloomingburg, Ohio,) will be, respectively, the sum of \$551,709.00 and \$448,530.00;

That the probable operating revenues in said exchange area for one year, based upon the rates and charges set forth in the company's proposed schedule, offered and introduced in evidence upon the hearing of this matter as "Cooper Exhibit No. 3," will be the sum of \$130,307.15;

That the company's reasonable operating expenses for one year for unified service in said exchange area would amount to the sum of \$74,936.08, leaving a balance for depreciation, interest and dividend charges of \$55,371.07;

That a reasonable charge for depreciation is five per centum of the reproduction value of said property, to wit, and

That, after setting aside the above amount for depreciation, there would then be the amount of \$27,785.62 for interest

and dividend charges, which said amount is six and two-tenths percentum of the present value of said property.

The Commission further finds that said return of six and two-tenths percentum is not unreasonable and, therefore, that said proposed rates and charges will not be unreasonable, unjust, excessive or discriminatory for the furnishing of unified service in the company's Washington, C. H., exchange area. It is, therefore,

Ordered, That, upon the complete unification of the plant and facilities of The Ohio Bell Telephone Company in its Washington, C. H., Ohio, exchange area, said company may establish and thereafter maintain, impose and collect for the furnishing of unified service in said area, the rates, charges, tolls and rentals hereinbefore found to be unreasonable, unjust, excessive or discriminatory. It is further

Ordered, That schedules be filed accordingly.

✱

No. 2367—In the Matter of the Joint Petition of The Ohio Bell Telephone Company and The Ohio State Telephone Company for the Consent of The Public Utilities Commission of Ohio to and their Approval of the Consolidation of Said Two Companies Under the Name of The Ohio Bell Telephone Company. Supplemental Order Fixing and Prescribing Rates for Unified Service in Fostoria Exchange Area.

(Dated June 29, 1922.)

This day, after full hearing, due notice of the time and place of which was given to all parties in interest, this matter came on for consideration upon the application of The Ohio Bell Telephone Company for an order fixing and determining the rates to be charged for unified service within its Fostoria, Ohio, exchange area; and the record made upon said hearing.

The Commission, having made an independent investigation of the company's property and books, and taking into consideration the testimony and exhibits offered at said hearing aforesaid, and being fully advised in the premises, finds:

That, upon the unification of its property in said exchange area, the reproduction and present values of the property of The Ohio Bell Telephone Company used and useful for the furnishing of local exchange service in the Fostoria, Ohio,

exchange area will be, respectively, the sums of \$284,059.00 and \$232,166.00;

That the probable operating revenues in said exchange area for one year, based upon the rates and charges set forth in the company's proposed schedule, offered and introduced in evidence upon the hearing of this matter as "Cooper Exhibit No. 3," will be the sum of \$83,101.68;

That the company's reasonable operating expenses for one year for unified service in said exchange area would amount to the sum of \$54,449.93, leaving a balance for depreciation, interest and dividend charges of \$28,651.75;

That a reasonable charge for depreciation is five percentum of the reproduction value of said property, to wit, \$14,202.95, and

That, after setting aside the above amount for depreciation, there would then be the amount of \$14,448.80 for interest and dividend charges, which said amount is six and two-tenths percentum of the present value of said property.

The Commission further finds that said return of six and two-tenths percentum is not unreasonable and, therefore, that said proposed rates and charges will not be unreasonable, unjust, excessive or discriminatory for the furnishing of unified service in the company's Fostoria, Ohio, exchange area. It is, therefore,

Ordered, That, upon the complete unification of the plant and facilities of The Ohio Bell Telephone Company in its Fostoria, Ohio, exchange area, said company may establish and thereafter maintain, impose and collect for the furnishing of unified service in said area, the rates, charges, tolls and rentals hereinbefore found to be not unreasonable, unjust, excessive or discriminatory. It is further

Ordered, That schedules be filed accordingly.

✽

No. 2224.—The Hocking Valley Brick Company, Complainant, vs. The Hocking Valley Railway Company, Defendant. Finding on Rehearing.

(Dated July 7, 1922.)

Complainant is a corporation engaged in the manufacture of brick at Logan, Ohio. For rate-making purposes on brick, Logan, Ohio, is grouped with certain other producing points on the line of the defendant's railroad, namely: Haydenville, Union Furnace, McArthur, Hamden, Nelsonville, New Straitsville, Carbon Hill, Greendale and Athens. The rate on brick is the same from each

of these group points to Columbus, Ohio, to other points on the defendant's railroad, and to points on lines connecting with defendant's railroad. Complainant obtains its raw material (shale) from Buchtel, Ohio, a point on the line of the defendant's railroad, eighteen miles southeast of Logan. Complainant attacks the grouping arrangement and alleges that the defendant's rate on shale from Buchtel to Logan is unjust, unreasonable and unjustly discriminatory. Complainant contends that it could be put on an equality with its competitors in only one of two ways:

1. By taking Logan out of the group and extending it a rate to the market lower than that extended to its competitors in proportion to their relative distance from the market and at the same time give is a substantially lower rate upon its fuel coal from Buchtel and Nelsonville which also moves in conjunction with its raw material to Logan.

2. By leaving the group undisturbed and granting complainant a milling-in-transit rate on its raw material and its finished product which would amount substantially to the rate it would be entitled to if its plant were located at Buchtel instead of Logan and also a reasonable reduction on its rate for fuel coal.

In our finding and order, made and entered herein as of date, June 3, 1921, we found:

"That the rate of defendant of twenty-eight cents per ton for transporting shale in carload lots, from Buchtel to Logan, was not unjust, unreasonable or excessive;

That the commission would not be willing to order a transit privilege established in connection with the movement of shale from Buchtel to complainant's plant at Logan and the transportation of brick therefrom to the markets served;

That it would be inadvisable to remove complainant's plant from the rate group, which has been in existence for many years and has been thoroughly established as the basis for the marketing of the brick manufactured upon the line of the defendant's railway, and

That the rate on brick from Logan to Lancaster, Ohio, was unjust and unreasonable to the extent that it exceeded the rate contemporaneously published in the defendant's mileage scale tariff."

Upon complainant's petition and after argument by counsel, the case was reopened and rehearing was had on September 6, 1921. The rate on coal is not involved in the proceeding and, consequently, that phase of the matter need not be discussed.

Crown Adjustment.

The record shows that Columbus, Ohio, is complainant's chief market for brick and that 90% of its shipments move to the northward. Logan is the most northerly point in the rate group, the other points being located from six to thirty-three miles to the south thereof. Complainant contends, account of the inclusion of Logan in the group, that it is subjected to unjust discrimination and deprived of the benefits of its advantageous location in close proximity to certain markets to the northward. The following table shows all the group points, other than Logan, and their actual distance from Columbus, Ohio:

Group Stations	Actual distance from Columbus, O.
Haydenville	56.5 miles
Union Furnace.....	56.7 "
Nelsonville	62.1 "
New Straitsville.....	62.5 "
Carbon Hill.....	71.5 "
Greendale	69.3 "
Athens	76.5 "
McArthur	75.4 "
Hamden	82.7 "

The average distance between all of the above points and Columbus is 68.13 miles and the distance from Logan to Columbus is 49.7 miles. Therefore, it will be noted, that Logan is 18.43 miles nearer Columbus than the average from all other points in the group. In comparing the distances of Columbus, the most extreme disparity exists between Logan and Hamden, there being a difference of 33 miles, out of a total distance of 82.7 miles, in favor of Logan. Group rate can be considered just and reasonable only insofar as they do not effect unjust discrimination and provided they are well balanced and their advantages and disadvantages fairly distributed. In our original finding and order, we held that the group relationship as established should be maintained and that we would not be warranted in excluding Logan therefrom. We are still of the same opinion so far as long-haul traffic is concerned but the group system is more applicable to long than to short-haul traffic and in other parts of the country short-haul rates on brick are checked in specifically and have no relationship to the group rates. In view of the combined record, it appears that the commission would be justified in breaking up the rate group in question, insofar as it effects short-haul movements within a radius

of 75 miles from the respective points of origin. However, if Logan should be excluded from the group and accorded lower rates on short-haul movements to the northward, it follows, of course, that Hamden, McArthur and other group points south of Logan, should also be excluded and given rates to Jackson, Gallipolis, Pomeroy and other nearby points to the south, lower than those applicable from Logan, all such rates to be properly graded according to distance.

Rate and Minimum Charge on Shale, Buchtel to Logan.

Complainant's plant at Logan was purchased from a bankrupt company in the year 1911 and for several years prior to that time, the plant had not been operated. Before making the purchase, complainant consulted the Hocking Valley traffic officials with regard to rate on its raw material and it was agreed between them that a rate of 10¢ per net ton on shale would be published from Buchtel to Logan, provided the shale was tendered in ten car lots. This rate was accordingly published and was subsequently made applicable to shipments in five car lots or over. It was testified that without this agreement complainant would not have purchased the plant, or if it did so, would have moved it to Buchtel or to a point on the B. & O. Railroad near Shawnee, Ohio, in order to be near the coal and shale. On June 15, 1918, following the fifteen per cent. Case, 45 I. C. C., 303, the shale rate was increased to 12¢. On June 25, 1918, under general order 28 of the director general of railroads, all road haul rates on shale were further advanced 25%. This would have resulted in a rate of 15¢, but said order contained a rule for disposition of fractions which provided that amounts of less than 5¢ would be omitted and amounts of 5¢ or greater, but less than 10¢ would be increased to 10¢, and what was more drastic, it provided for a minimum charge of \$15.00 per car, therefore, under said order the rate became 20¢ per net ton with a minimum charge of \$15.00 per car. On August 26, 1920, under I. C. C., Ex Parte, 74, Ohio 885, the rate was again increased by 40%, making it 23¢ per ton, subject to the same minimum of \$15.00 per car. On July 1, 1922, (since this case was submitted) under I. C. C., Docket 13293, our special permission 2480, the rate was decreased by 10%, thus making the present rate 25¢ per net ton but the effective tariff still provides for a minimum charge of \$15.00 per car. The record shows that cars not exceeding fifty tons capacity are usually used in this service and, as a rule, such cars are loaded 10% above capacity; 35 tons @ 25¢ equals \$13.75. Therefore, it will be observed that

the present rate of 25¢ per ton is, in effect, merely a paper rate because of the minimum charge of \$15.00 per car. Defendant's present tariff, applicable to this traffic, carries the following provision:

"The minimum charge for a line haul of carload shipment shall be \$15.00, except same will not apply to brick, cement, coal, coke, logs or sand and gravel and stone (broken), (crushed or ground)."

It will be noted that a number of commodities of a greater commercial value than shale, including sand, gravel and stone, are excepted from the application of the \$15.00 per car minimum charge. The minimum charge of \$15.00 represents 300% of the charge that would accrue under the original rate when cars are loaded to full capacity. Minima are usually imposed under the supposition that cars may not be loaded to their capacity and to save the carriers from loss when cars are only partly loaded. They are seldom imposed for the purpose of providing revenue above the published rate when cars are loaded to capacity. In the instant case, and under the rate now in effect, cars furnished by defendant are incapable of being loaded sufficiently to produce the minimum charge. Under the circumstances and conditions appearing of record, we are of the opinion, and so find, that the minimum charge of \$15.00 per car for the transportation of shale from Buchtel to Logan is unjust and unreasonable and should be cancelled. However, it would appear that a minimum weight per car equal to the capacity of the car is justified. Were it not for the arbitrary rule governing the disposition of fractions, embodied in General Order No. 28 of the director general of railroads, the shale rate involved, under the authorities heretofore mentioned, would today be 19¢ per net ton.

The record shows: (a) That the shale pits at Buchtel are located on a system of tracks owned by the New York Coal Company, which owns the control of The Hocking Valley Brick Company; (b) That respondent delivers empty cars for shale loading and receives the loaded cars from complainant at Buchtel over an interchange track, the complainant performing the spotting and gathering service at its own expense; (c) That the shale shipments involved are regular and of considerable volume, moving in train lots of five cars or more; (d) That special train service is not required of the respondent in moving the empty and loaded shale cars, the service being performed by branch and main line crews

in connection with the distribution of empty cars to the coal mines and movement of coal and other commodities from Buchtel and nearby points to Nelsonville, Logan and other markets to the north, and (e) That all the coal consumed at the complainant's plant at Logan comes from Buchtel and vicinity, such coal shipments moving regularly and in the same trains that move the shale shipments. While the reasonableness of freight rates is not to be predicated on the equities that a shipper may have under contracts or agreements with carriers, it often happens that the very existence of an industry depends on the rate accorded to it and, if a carrier has established a particular rate for the purpose of enabling an industry to exist, and, if upon the strength of that rate money has been invested which must be destroyed if the rate is increased or withdrawn, it is our understanding that this fact might properly be considered in determining the reasonableness of the rate, although it is not controlling. Under all the circumstances and conditions appearing of record, we are of the opinion that a rate of 20¢ per net ton on complainant's shale shipments from Buchtel to Logan, with minimum weight equal to market capacity of the car, would compensate defendant for its out-of-pocket cost, contribute something to overhead expense, and yield a margin of profit.

Mileage Scale Rates Versus Group Rates.

In any event, defendant's rates on paving block or brick from Logan and other points in the group to local destinations on the line of the defendant carrier should not exceed the contemporaneously effective mileage scale rates applicable to the same commodities.

Conclusion.

Upon the whole record we are of the opinion and find that the present adjustment is working inequitably and to complainant's disadvantage. The defendant will be given the option of correcting the mal-adjustment, either by removing Logan from the rate group for short-haul movements with a radius of seventy-five miles and extending to complainant rates upon its finished product to north-bound destinations (within the seventy-five mile limit) which shall be appropriately graded according to distance and lower than those applicable from the more distant points of origin in the present group, or by leaving the present rate group undisturbed and establishing a rate not exceeding 20¢ per net ton, with carload

minimum equal to the marked capacity of the car, for the transportation of complainant's shale shipments, Buchtel to Logan.

An order will not issue at this time, but we are constrained to urge upon the defendant an early adjustment to bring the matters in controversy into harmony with the views herein expressed. Upon failure to do so within thirty days, an appropriate order will issue.

This supersedes and takes the place of our original finding and order in this case, dated June 3rd, 1921.

Order.

This matter having heretofore been fully reheard, and the commission having, this day, made and filed in writing, its findings of fact upon such rehearing, it is

Ordered, That copies of such findings be transmitted to the parties hereto, and that the making of a final order herein be, and hereby the same is deferred for a period of thirty days from the date hereof, so contemplated by the conclusion of such findings.

ATTORNEY GENERAL

Under Existing Law the Superintendent of Public Instruction is Without Authority to Consider Cases Involving the Revocation of Teachers' Certificates, the Sole Reference to the Same Occurring in Section 7827, G. C., Wherein the Board of County School Examiners is Authorized to Conduct a Hearing Upon the Question of Revocation of the Certificate of a Person who is "the Recipient of a Certificate."—Under the Provision of 7847, G. C., the Authority Given to a Board of County School Examiners for the Revocation of Teachers' Certificates, as set Forth in 7827, G. C., is Vested in a City School District in the Board of City School Examiners.

No. 3225.—(Opinion Dated June 16, 1922.)

Hon. Vernon M. Riegel, Superintendent of Public Instruction as Director of Education, Columbus, Ohio.

Dear Sir: Acknowledgment is made of the receipt of your request for an opinion upon the following:

"Under Section 7821-1, General Code, as it has been in effect ever since 1914, it is provided that 'five year and eight year certificates shall be renewed by the superintendent of public instruction upon proof of the successful teaching of the holders thereof.' The wording is slightly different in the code as in effect up to August, 1921.

In Section 7827, which pertains to county certificates, and apparently by Section 7847 to city certificates, it is provided that the local board of school examiners, county or city, may revoke for the causes named in Section 7827 upon proper hearing a certificate issued by themselves.

But when a certificate originally issued by a county or city board of examiners has been renewed under the provision of Section 7821-1, shall the superintendent of public instruction proceed to consider the case and if the holder is found guilty revoke certificate, or shall the revocation be considered as coming under the jurisdiction of the board of examiners which originally issued the certificate, or the board of examiners in the district in which the teacher is serving?

If the duty of considering revocation is that of the Superintendent of Public Instruction is it possible to cite me to anything which would define the proper plan of procedure in such a case?"

Section 7821-1, as it appeared in 104 O. L., p. 100, read as follows:

"All five-year and eight-year certificates now granted shall

continue in force until the end of their terms and shall be renewed by the superintendent of public instruction upon proof that the holders thereof have taught successfully until the time of each renewal.* * *

As amended in 109 O. L., p. 188, Section 7821-1, now reads in part:

"Five-year and eight-year certificates shall be renewed by the superintendent of public instruction upon proof of the successful teaching of the holders thereof. * * *

Five-year and eight-year certificates that were permitted to expire without application for renewal at the time of such expiration may be renewed by the superintendent of public instruction upon proof that the holders thereof have taught successfully for five years."

Other sections of the law pertinent to your inquiry are as follows:

"Sec. 7827. No certificate shall be issued to any person who is less than eighteen years of age. If at any time the recipient of a certificate be found intemperate, immoral, incompetent or negligent, the examiners, or any two of them, may revoke the certificate; but such revocation shall not prevent a teacher from receiving pay for services previously rendered. Before any hearing is had by a board of examiners on the question of the revocation of a teacher's certificate, the charges against the teacher must be reduced to writing and placed upon the records of the board. He shall be notified in writing as to the nature of the charges and the time set for the hearing, such notice to be served personally or at his residence; and be entitled to produce witnesses and defend himself. The examining board may send for witnesses and examine them on oath or affirmation which may be administered by any member of the board touching the matter under investigation."

"Sec. 7828. The fees and the per diem of examiners for conducting such investigation at three dollars a day each and other expenses of such trial shall be certified to the county auditor by the clerk and president of the examining board and be paid out of the county treasury upon the order of the auditor."

"Sec. 7845. All five-year and eight-year certificates now granted shall continue in force until the end of their terms and shall be renewed by the superintendent of public instruction upon proof that the holders thereof have taught successfully until the time of each renewal. Each application for renewal shall be accompanied by a fee of fifty cents and shall be filed in the office of the superintendent of public instruction."

"Sec. 7847. All provisions of preceding and following

sections pertaining to county school examiners and applicants for county teachers' certificates shall apply also to city examiners and applicants for city teachers' certificates unless there are specific provisions of law applying to the latter."

It will be noted that the same authority for the superintendent of public instruction to renew certificates in 7845, G. C., as well as 7821-1, G. C., to which you invite attention. However, while this authority or renewal of certificates is specifically given to the superintendent of public instruction, as stated, no where in the General Code is there any authority found or the procedure prescribed for the revocation of a certificate by the state superintendent of public instruction. Apparently we are confronted by the usual proposition that the county board of school examiners can grant certain certificates but cannot renew that particular kind of certificate, the authority for renewing being given to the superintendent of public instruction; the county board of school examiners has been given specific authority to revoke certificates as set forth in Section 7827, G. C., but no where in the code does authority appear for any revocation proceedings by the state superintendent of public instruction, even though he issued the renewal of the local certificate in question and is also interested in more or less degree in the certificates issued by the state board of school examiners. What has happened is that the general assembly has given this authority of renewal of county teachers' certificates to the superintendent of public instruction and then omitted any reference whatever as far as that official is concerned to the revocation of such certificates which were renewed.

The revocation of a certificate to teach school is a very serious matter in that it removes a person holding the certificate from the occupation which he might desire to pursue.

It would appear that this right of the individual was what the law-making body had in mind when it enacted Section 7827, G. C., and provided therein for a hearing or trial in the matter. Section 7827 provides that the certificate may be revoked at any time if "the recipient of a certificate" is found intemperate, immoral, incompetent or negligent, by the board of county school examiners or any two of them. Here is a direct statement that the action of two members of the board is necessary in the affirmative before the revocation could take place, and the deciding of the same was not left in the hands of any one individual. The section then provides further that the charges against the teacher, (which must lie to the grounds appearing in the section) must be

reduced to writing, placed upon the records and the "recipient of a certificate" notified in writing as to the nature of the charges and the time set for hearing. It is further provided that he is entitled to produce witnesses and defend himself and the examining board may send for witnesses, and all witnesses may be examined on oath or affirmation. Thus Section 7827, providing that the revocation must have the votes of two of the persons constituting the tribunal, gives this entire proceeding the nature of a trial; in fact, we find in the next Section 7828, *supra*, that reference is made to the "expenses of such trial." It would seem that if the law-making body, in so carefully safe-guarding the rights of the "recipient of a certificate," desired that the superintendent of public instruction should also conduct a hearing or trial of this kind, that provision would have been made in the law for his doing so and proper administrative procedure prescribed. However, nothing of the kind appears, as stated heretofore.

Your question is "shall the superintendent of public instruction proceed to consider the case" of revocation and "if the holder is found guilty revoke the certificate, or shall the revocation of the certificate be considered as coming under the jurisdiction of the board of county school examiners which originally issued the certificate, or under the board of examiners in the district which the teacher is serving." Answering this it may be said that the law has not provided for the revocation of renewed certificates except as may appear in Section 7827, *supra*. This section provides that there may be a revocation of the certificate of any one who is "the recipient of a certificate." The renewed certificate issued by the superintendent of public instruction upon the original certificate issued by the local board of school examiners simply takes the place of the old certificate issued by the local board. That is to say, in one year the "recipient of a certificate" was authorized to teach under the certificate granted by the local board of school examiners; prior to the beginning of the next school year there might be a renewal of the old certificate by the state superintendent of public instruction and in the next year the teacher performed his services under the renewed certificate which took the place of the old certificate. It cannot be conceived that because of a mere omission in the law the renewed certificate could not also be revoked (as could be the certificate it replaced) if the "recipient of a certificate" were found to be "intemperate, immoral, incompetent or negligent."

The general assembly has set forth clearly the procedure for

revocation in Section 7827, giving this authority to the local board of school examiners, the result being that the recipient of a certificate would be tried in his own community and by a tribunal of three persons who would have better knowledge of local conditions and the facts in the case than if the hearing was held by the state superintendent of public instruction at his office. It is not possible to point out to you "any proper plan of procedure in such a case," for the law has not provided any other than that mentioned in Section 7827, G. C.

It is significant to note that almost the exact language occurring in Section 7827, G. C., providing for revocation (hearing and the examination of witnesses) for a long time appeared also in Section 7850, G. C., for Section 7827, G. C., referred to the county board of school examiners and Section 7850, G. C., came under the head of city board of school examiners. Thus there were two sections in the law providing for the revocation of teachers' certificates by examining boards, but there was no section providing for the revocation of any certificate by the state superintendent of public instruction. One of these sections (7850, G. C.), was repealed outright in H. B. 129, effective August 1, 1921, and appeared at page 188, 109 Ohio Laws. It was found that Section 7850, G. C., was no longer necessary in the code because Section 7847, G. C., was amended to read as quoted above and the provisions of sections pertaining to county school examiners and applicants for county teachers' certificates "shall apply also to city examiners and applicants for city teachers' certificates."

In Section 7857 it is provided that an applicant for a certificate may appeal his case to the superintendent of public instruction for final review where the "applicant has cause to and does believe that he has been discriminated against and his manuscripts unfairly graded" but this does not go into the question of the revocation of a certificate. This section is then followed by Section 7858, G. C., providing for the procedure on appeal to the superintendent of public instruction, Section 7858, G. C., reading as follows:

"Every appeal from the board of examiners shall be in the form of an affidavit setting forth the facts as the applicant believes them and shall be accompanied by a fee of one dollar to cover the expenses incident to such appeal. Upon receipt of such affidavit and fee the superintendent of public instruction shall require the clerk of such board to procure and forward the manuscripts of such applicant, together with a full explanation of the reasons for the board's action. If upon examination of the manuscripts, and record the superintendent

finds that the applicant was denied a certificate when one should have been granted him and has been discriminated against by the board, the superintendent shall order forthwith a certificate to be issued of the date of the examination attended by the applicant, and he shall indicate the length of time such certificate shall be valid. If, upon inspection of the manuscript and reviewing the facts submitted, the superintendent of public instruction concludes that no injustice has been done, he shall so notify the applicant and the clerk of the board of examiners."

It will be noted that nowhere in Section 7858, G. C., providing for action by the superintendent of public instruction in the case of appeal by a teacher, is any reference made to the revocation of a certificate.

You are therefore advised in answer to your inquiry that:

1. Under existing law the superintendent of public instruction is without authority to consider cases involving the revocation of teachers' certificates, the sole reference to the same occurring in Section 7827, G. C., wherein the board of county school examiners is authorized to conduct a hearing upon the question of revocation of the certificate of a person who is "the recipient of a certificate."

2. Under the provisions of Section 7847, G. C., the authority given to a board of county school examiners for the revocation of teachers' certificates, as set forth in Section 7827, G. C., is vested in a city school district in the board of city school examiners.

J

Sections 2432-1 to 2432-4, General Code, are to be Read as Independent of and not Subject to any Limitation Found in Section 2421, General Code. These Sections Deal With the Repair of Bridges Upon Roads in a Conservancy District.

No. 3227—(Opinion Dated June 16, 1922.)

Hon. Foster E. King, Prosecuting Attorney, Kenton, Ohio.

Dear Sir: You have submitted for the consideration of this department the following:

"Under and by virtue of Section 2421 General Code the Board of County Commissioners is limited in the construction and repairing of bridges over streams to state and county roads.

The Supreme Court in 59 O. S., 163 held that the county commissioners are not required to construct or keep in repair bridges on streets established by the city and not a part

of a state or county road, even though the city receives no part of the bridge fund.

There is and has been established in Hardin county a conservancy district under and by virtue of 104 O. L., 13. In the carrying out of the official plan of the district it became necessary to remove all the bridges across the Scioto river and in the conservancy district and in this county. The work of the district consisted of widening, deepening and straightening the Scioto river.

On account of the increased width of the river and the plan of the said district it became impossible to use the present bridges across the river. A part of these bridges are located in the city of Kenton and in the conservancy district and across the Scioto river. A part of these bridges in the city connect up state and county roads. Some of the bridges in the city are used solely to connect up city streets from one side of the river to the other.

House Bill 395 (109 O. L., 348) was passed to take care of the emergency particularly in Hardin county caused by the creating of a conservancy district.

Can the commissioners under House Bill 395 construct and replace all the bridges in the city of Kenton under this act or are they limited in the construction of bridges to Section 2421 General Code?"

Section 2421, G. C., reads as follows:

"The commissioners shall construct and keep in repair necessary bridges over streams and public canals on state and county roads, free turnpikes, improved roads, abandoned turnpikes and plank roads in common public use, except only such bridges as are wholly in cities and villages having by law the right to demand, and do demand and receive part of the bridge fund levied upon property therein. If they do not demand and receive a portion of the bridge tax, the commissioners shall construct and keep in repair all bridges in such cities and villages. The granting of the demand, made by any city or village for its portion of the bridge tax, shall be optional with the board of commissioners."

Said section has been the subject of discussion in several recent opinions of this department. See Opinions 1919, Vol. II, p. 1622; 1920, Vol. II, p. 1075; 1921, Vol. I, p. 484. See also the recent case of *Youngstown v. Sturgess*, 102 O. S., 480. These several opinions deal rather with the keeping in repair of bridges than with original construction. However, the general tenor of all said opinions is in line with the views embodied in the first two paragraphs of your letter to the effect that the limit of the authority of the county commissioners as a general rule is to con-

struct and keep in repair only those bridges within cities on state and county roads, etc., and that it is the duty of the city to construct and keep in repair bridges on those streets which are not part of the line of a state or county road, etc.

Your question is in brief whether the terms of said Section 2421 as thus construed are to be read as a limitation upon Sections 2432-1 to 2432-4, G. C., comprising the act described in your letter as House Bill 395, appearing in 109 O. L., 348.

The title of the latter act is:

"An act to authorize county commissioners to repair, replace and reconstruct bridges removed from rivers, creeks and water courses by reason of the removal thereof in conservancy districts and to authorize county commissioners to borrow and expend money therefor and to exempt the issue of bonds and levies of taxes made for such purposes from certain requirements and limitations."

Section 1 of said act, designated Section 2432-1, reads as follows:

"That in all counties in which there has been or may hereafter be established a conservancy district under the act of February 5th, 1914, known as the 'Conservancy Act of Ohio,' wherein the official plan for the improvement of rivers, creeks or other water courses required the removal of bridges across such rivers, creeks or water courses in any such conservancy district, and public travel is or will be closed or greatly interfered with in such district and such an urgent and immediate public necessity exists for the repairs, alteration and replacement of bridges or the construction of new bridges over such rivers, creeks or water courses, the county commissioners are hereby authorized to enter into contracts under the general laws of this state, to remove, alter, repair, replace and construct new bridges over such rivers, creeks or water courses that have been or will be removed therefrom in the process of improvement under said conservancy act, and appropriate money, levy taxes, borrow money or issue bonds for such purposes."

Further sections of the act need not be quoted here. It is sufficient for present purposes to say that the remaining sections of the act are consistent with the first section in that they make no distinction whatever on the score of the location of a bridge as between state or county roads on the one hand and municipal streets on the other.

The Conservancy Act which you refer to as appearing in 104 O. L., p. 13, is the same as that described in above quoted Section 1

as the act of February 5th, 1914. Moreover, your letter indicates that the entire conservancy district which you refer to is located within Hardin county; and you have stated on a personal call at this office that such is the fact.

It is very clear that said Sections 2432-1 to 2432-4 do not deal with the question of bridge construction from the usual standpoint of whether the county or city is to carry out the work. Said sections are dealing with a special situation created by the doing of work in a conservancy district. Therefore, the terms of said Sections 2432-1 et seq. are to be dealt with as being special in their nature and from the standpoint of the purpose of the act of which they are a part, as shown by the title of that act above quoted.

It is quite true that the tax levy for the provision of funds with which to erect bridges under Sections 2432-1 et seq. is to be made on all the taxable property within the county, as is the case with the construction of bridges, in accordance with Section 2421. That fact, however, cannot prevail against the fact as already stated that Sections 2432-1 et seq. deal with a conservancy district. In the case at hand, the bridges on the city streets not forming part of a state or county road are within the conservancy district exactly as are those bridges on the streets which do form a part of a state or county road.

From the foregoing considerations it is the opinion of this department and you are accordingly advised that the terms of Sections 2432-1 to 2432-4 are to be read as independent of and not subject to any limitation found in Section 2421, G. C.

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A City Councilman Whose Term of Office Has Expired, May be Appointed Director of Public Service in the Same Municipality as That in Which he Served as Member of Council.

No. 3233.—(Opinion Dated June 17, 1922.)

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

Gentlemen: Receipt is acknowledged of your recent communication which reads as follows:

"Section 12912, G. C., provides in part that:

'Whoever being an officer of a municipal corporation or member of council thereof, or a trustee of a township, is interested in the profits of a contract, job, work or service for such corporation or township, or acts as a commissioner, archi-

tect, superintendent or engineer in work undertaken or prosecuted by such corporation or township during the term for which he was elected or appointed for one year thereafter, etc.'

Opinions of the Attorney General No. 398 of 1912, volume 2, page 1743, and No. 6 of 1917, volume 1, page 10, held that a councilman in a city might resign and immediately be appointed as street commissioner in a city; an office subordinate to that of director of public service.

Question: May a member of council immediately upon expiration of his term of office be legally appointed director of public service of the same city in view of the 'one year' provision of Section 12912, G. G.?"

Pertinent to your inquiry, Section 12912, G. C., reads as follows:

"Sec. 12912. Whoever, being an officer of a municipal corporation or member of the council thereof or the trustee of a township, is interested in the profits of a contract, job, work of services for such corporation or township, or acts as commissioner, architect, superintendent or engineer, in work undertaken or prosecuted by such corporation or township during the term for which he was elected or appointed, or for one year thereafter, or becomes the employe of the contractor of such contract, job, work, or services while in office, shall be fined not less than fifty dollars nor more than one thousand dollars or imprisoned not less than thirty days nor more than six months, or both, and forfeit his office."

Construing the section quoted with reference to the one year provision thereof, it was held in a previous opinion of this department under date of January 20, 1917, volume 1, 1917 Opinions of the Attorney General, as follows:

"It has always been considered by this department that the one year provision served merely as a prohibition against such officer acting as commissioner, architect, superintendent, or engineer in work undertaken or prosecuted by such corporation within one year after his term had expired."

Opinion No. 398, Opinions of the Attorney General, 1912, volume 11, page 1744, construing the same section, held in part:

"The purpose of this section is to prevent an officer of a municipality from having any interest in the profits of any contract or work done for the city. It specifically prohibits such officer from acting as commissioner, architect, superintendent or engineer in work undertaken by the municipality during the term for which he was elected or appointed and for one year thereafter. The statute seeks to prevent any officer from securing any interest in any contract with the muni-

cipality, so that he might not be tempted to use his official position to further the interests of a contractor or himself.

It is not the purpose of the statute to prevent an officer from holding another office in the village or city, at the expiration of the term of his first office, even though the second office has duties which pertain to work undertaken by the municipality. Likewise this section does not prevent an officer resigning a position in the city government and accepting appointment to another office in the service of the city."

Agreeing with the construction placed upon the section by the two opinions cited, and applying a similar process of reasoning to your question, it is thought that the one year provision indicated by Section 12912, G. C., would not apply as to limit or affect the right of a member of council upon the expiration of his term of office to qualify as director of public service in the same city in which he had served as member of council, since it is not thought that the office of director of public service could be said to come within the statutory prohibition as expressed by the language used in Section 12912, G. C., which prohibits an officer of a municipality in the instance from acting as commissioner, architect, superintendent, or engineer in work undertaken or prosecuted by the corporation during the term for which he was elected or appointed or "for one year thereafter."

Approaching the subject from a different viewpoint it may also be reasoned that the director of public service is the head of a municipal department directly responsible to the mayor for his appointment, and as such an official, is fully amenable to the provisions of the General Code which prohibits him from deriving any personal benefits or having any interests other than official in the contracts made by the corporation, hence it is not thought that the provisions of Section 12912, G. C., were intended as a limitation upon the qualifications of the office of director of public service, and under such circumstances as your inquiry indicates, no reason can be seen why a city councilman whose term of office has expired, may not be appointed director of public service in the same municipality as that in which he served as member of council, provided of course that he is qualified in other respects for the holding of such an office.

SECRETARY OF STATE

NEW CORPORATIONS

The Weghorst and Martin Seed Co., Dayton, \$30,000. J. H. Weghorst, Bessie E. E. Martin, H. C. Weghorst, C. H. Weghorst.

The Mylius Co., Zanesville, \$75,000. John A. Pfister, Tom O. Crossan, Edward R. Meyer, Homer E. Walters, Ethel Sprague.

The I. & D. Constr. Co., Cleveland, \$10,000. I. Schneiderman, R. Spivack, D. Spivack, D. T. Lawrence, R. B. Lawrence.

The Catharine Huebner Realty Co., Toledo, \$10,000. Catharine Huebner, John J. Huebner, Henry E. Huebner, Arthur G. Huebner, George H. Beckwith.

The White Cross Dairy Co., Dayton, \$10,000. J. N. White, Osea J. White, E. L. White, W. W. White, Charles Howard White.

The McNeil and Olson Co., Dayton, \$10,000. T. W. McNeil, N. F. Nolan, Mason Douglass, C. H. Gosiger, Laura E. Swope.

The Perkinswood Realty Co., Warren, \$50,000. W. W. Heron, Geo. T. Fillius, R. H. Wilkinson, Jr., Helen Shoenberger, Elizabeth Baldwin.

The Progressive Mortgage Co., Lorain, \$500. D. A. Cook, R. M. Claire, R. R. Jones, H. F. Dickinson, Fred W. Tillman.

The Central Pottery Co., Zanesville, \$500. Guy C. Fitz, Fred A. Mills, Julius Longshore, Edwin Gardner, Edgar Selsam.

The Standard Valve Co., Cleveland, \$500. H. H. Baer, Frank E. Baker, J. E. Cappus, J. T. Joss, J. C. Storer.

The Ohio Crankshaft Co., Cleveland, \$500. Wm. A. McAfee, Maurice F. Hanning, T. F. Veach, A. B. Oakes, M. L. Meade.

The Johnson & Higgins Co., Cleveland, \$5,000. G. E. Fisher, W. E. Hall, Burton J. Dibble, Alfred Fritzsche, H. F. Erzinger.

The Coin Clock Service Co., Cleveland, \$500. Irwin N. Loeser, Ira J. Warner, H. Stewig, I. L. Nichols, Frank G. Mooney.

The Voight Motor Co., Cleveland, \$500. Elmore L. Andrews, A. H. Meyer, David A. Gaskill, H. Walter Stewart, J. Frank Pease.

The Buckeye Seed Co., Cleveland, \$10,000. Ogden Gaul, Fred Owen, Sylvester Thomas, Robert A. Valyo, Margaret Geddes.

The Rosenberry Co., Canton, \$10,000. Carl A. Sinclair, H. K. Rosenberry, Bern W. Spragg, Frank M. Smith, E. L. Mills.

The Sinclair Amusement Co., Cincinnati, \$10,000. Carl A. Sinclair, H. K. Rosenberry, Bern W. Spragg, Frank M. Smith, E. L. Mills.

The Smithson Stone Co., Cincinnati, \$10,000. David Smith, J. E. Maloney, Roger L. Neff, Jr., S. Geismer, L. G. Denghausen.

The Mitchell Steel Co., Cincinnati, \$50,000. Wm. H. Mitchell, Thos. B. Morris, Carl W. Frey, A. R. Farris, W. A. Rinckhoff.

The Hilton-Davis Co., Cincinnati, \$50,000. Robert W. Hilton, A. B. Davis, Danesi Hilton, Ralph R. Caldwell, Mary J. Davis.

The Hancock Jersey Bull Co., Findlay, \$10,000. Glenn Roberts, Charles Clymer, Zay Clymer, S. B. Rose, Leland L. King, Ed. Johnston.

The Al Lichtman Exchange Co., Cleveland, \$5,000. M. W. Bruml, H. L. Taylor, C. I. Goldsmith, H. S. Goldsmith, J. W. Little.

The Forest City Oil Co., Ridge Road, (Brooklyn Twp., Cuyahoga Co.), \$50,000. F. Wm. Kurzenberger, Clayton W. Tyler, J. Little, H. F. Redick, M. Marecz.

The First National Co., Columbus, \$1,000. Thomas H. Moore, Bess Allen, C. E. Berridge, Margaret James, Florence E. Hite.

The Elliott-Guest Co., Cleveland, \$10,000. H. N. McLaughlin, Samuel K. Elliott, Albert L. Guest, Ralph R. Snow, L. H. Neff.

The Civic Realty Co., Columbus, \$50,000. Dean C. Throckmorton, James K. Stevenson, Edward J. Greely, R. J. Bartlett, W. W. Metcalf.

The Weiss Realty Co., Cleveland, \$10,000. Joe Weiss, A. J. Schanfarber, E. L. Mueller, E. J. Novy, A. M. Nell.

Jos. C. Hostetler, Frank E. Stevens.

The E. W. Scripps Co., Hamilton, \$500. R. P. Scripps, Thomas L. Sidlo,

The H. R. W. Oil & Gas Co., Elyria, \$25,000. G. R. Wiseman, Arthur Hutt, Mose Wilder, A. J. Robson, Jas. A. Hewitt.

The Ohio Refractories Co., Portsmouth, \$100,000. M. K. Hitchcock, H. W. Heer, Norman Adams, B. H. Dillon, Jas. A. Hager, Geo. D. Selby, Roger A. Selby.

The Vettle Riding Device Co., Coney Island, (California), Hamilton Co., \$40,000. A. Vettle, Geo. C. Schmidt, C. Schmidt, Mrs. A. Vettle, Louis Glasbrenner.

The Frank Motor Sales Co., Akron, \$10,000. John C. Frank, Charles W. Frank, Paul A. Frank, Ambrose M. Dwyer, Ford L. Carpenter.

The First Educational Foundation Co., Cleveland, \$500. Charles W. Pattison, L. S. Sobel, H. Dobrin, Frank S. Taylor, E. Zalad.

The Norwood Products Co., Delaware, \$100,000. Frederick A. Norwood, Emil Norwood, Ralph H. Main, David Morgan, John F. Robinson.

The M. Baker-Auto Top Co., Cleveland, \$5,000. Morris Baker, Rebecca Baker, Albert Lipshutz, Sylvia Lipshutz, Max Chesin.

The S. Alter Co., Cleveland, \$50,000. A. W. Haiman, Jacob L. Alter, Sol Alter, D. H. Leidner, Abraham Fliegel.

The Big Three Overall Mfg. Co., Cincinnati, \$250,000. Samuel Levy, David N. Levy, Jess Ray, Wm. L. Benham, Anna Levy.

The Lucier Amusement Co., Cleveland, \$25,000. John W. Reavis, Leslie Nichols, Thos. H. Jones, Eben H. Jones, E. C. Ort.

The A. R. Amacher & Co., Cleveland, \$10,000. Victoria Been, Louis Yeleky, Steve Wascak, Curtis E. Landon, F. U. Mowll.

The Frank N. Riley Co., Cleveland, \$500. Frank G. Mooney, Ira J. Warner, O. E. Shaw, S. L. Waxman, I. L. Nichols.

The Klein Battery & Electrical Co., Canton, \$20,000. Walter L. Ley, Henry L. Ley, Edmund D. Brant, A. E. Hockwalt, Ed. L. Smith.

The Millersport Improvement Co., Millersport, \$10,000. A. W. Peters, Charley Decker, R. M. Gill, C. A. Swisher, C. R. Lewis.

The Portage Insurance Agency Co., Akron, \$1,000. Meyer Lifshitz, Samuel Rovin, John B. Bachmann, Harry Desur, Sol Reiser.

The Joseph Wilkoff Construction Co., Youngstown, \$10,000. Isaac Wilkoff, Joseph Wilkoff, Leo S. Wilkoff, P. P. Brown, John J. Joyce.

The Superior China Co., Toronto, \$25,000. Luke E. O'Brien, Hugh J. Doran, Jr., Alphonso L. Doran, Hugh J. Doran, Sr., John M. Amick.

The Allen County Paving Co., Lima, \$50,000. Walter J. Neidhardt, M. O'Brien, G. E. Mahaffey, J. S. Bitler, T. B. Wickliffe.

The Corlett Furniture Co., Cleveland, \$5,000. Edward I. Siegel, Samuel O. Siegel, Haskel W. Kramer, B. W. Desberg, H. H. Cowan.

The A-C Rubber Co., Elyria, \$10,000. W. R. Huntington, J. W. Dewhurst, Mose Wilder, J. A. Elbert, F. A. Stetson.

The Unueda Products Co., Cleveland, \$500. Fred Overmyer, H. R. Palmer, Wayne Eberly, L. A. Pickering, Carl A. Hope.

The Bonney Castle Club Co., Hiram, \$12,500. Chas. Edw. Nubbell, Carl R. Brown, Ben H. Blair, Geo. W. York, David W. Teachout.

The Northern and Southern Finance Co., Cleveland, \$10,000. I. H. Huggett, Wm. R. Parmele, C. W. Huggett, M. E. Anderson, Robt. C. Wolfe.

The C. B. Davey Constr. Co., Toledo, \$1,000. Claude B. Davey, Clara B. Davey, Harold H. Debth, Irma M. Debth, Laurel A. Morris.

The Marl-Nitro Sales Co., Cleveland, \$10,000. L. K. Braund, Harold H. Burton, Thomas H. Westlake, Charles J. Smith, Joseph B. Keenan.

The Christ, Hoffman and Ayling Co., Toledo, \$25,000. Joseph A. Christ, Alvin W. Ayling, Wm. F. Hoffman, Frederick C. Schaal, Geo. N. Fell.

The Candoo-Grizzell Contracting Co., Toronto, \$30,000. William W. Candoo, Wm. H. Grizzell, Samuel D. Bell, Ossie Candoo, Paul R. Grizzell.

The Circle Music Pub. Co., Cincinnati, \$15,000. Louis R. Foster, Ella Foster, Walter F. Carr, James Dial, Eli G. Frankensline.

The Greyton Building & Investment Co., Cleveland, \$10,000. Mollie Friedman, Harry Sheinkman, Morris Friedman, Wallace O. Anderson, Jane A. Anderson.

The Aetna Calender and Printing Co., Cleveland, \$3,000. Alfred Miliello, Jos. P. Pappano, Agatina Caudullo, Salvatore M. LoPresti, Frank Caudullo.

The Zaas-Zwick Co., \$5,000. Cleveland, K. E. Hagerty, H. P. Fetterman, Mary Khas, Sam Zaas, E. B. Swick.

The Jones-Finney Motor Co., Canton, \$20,000. E. L. Jones, C. L. Finney, Nancy L. Finney, Ruth G. Jones, Ed. L. Smith.

The Fair Machinery Co., Cincinnati, \$30,000. Marion G. Overend, Burton F. Selance, E. G. Bickler, Harry M. Wilson, Arthur Wood.

The Service Sign Co., Dayton, \$20,000. Oliver W. Kearns, Grant W. Nicholas, Anna E. Kearns, Elsie Nicholas, Louis E. McGlaughlin.

The Artcraft Garment Mfg. Co., Chillicothe, \$10,000. O. J. Glaubitz, Walter W. Boulger, C. Fulton Smith, J. L. Woodruff, F. B. Maullar.

The White-Barr Coal Co., Cleveland, \$30,000. W. L. Barr, N. J. Brewer, A. B. Curtiss, C. H. Bell, Jr., Wm. Kaple.

The Peoples Pub. Co., Ashtabula, \$500. Homer A. Mack, R. E. Willing, Earl L. Williams, Robert A. Dennis, Clifford J. Mack.

The Rutledge Coal & Mining Co., Toronto, \$30,000. Jas. A. Rutledge, B. M. Rutledge, Frank P. Rutledge, John S. Rutledge, W. A. Rutledge.

The Chawm Investment Co., Cleveland, \$10,000. Sydney A. Davies, W. L. Mould, George I. Cramer, Elise F. Peterson, Myrtle Koehler.

The Smith-MacIntosh Co., Akron, \$10,000. Edward L. Tragresser, Harry W. Smith, W. W. McIntosh, Ruth L. Brannan, Lamonte Thornton.

The Renrock Realty Co., Cleveland, \$10,000. Wm. H. Loveman, A. G. Goldman, S. A. Thorman, S. Z. Brown, B. Hamilton.

The Cleveland Salvage & Sales Co., Cleveland, \$5,000. I. Grohs, M. G. Harrison, M. L. Harrington, C. W. Gallagher, F. M. Wheeldin.

The Manhattan Supply Co., Columbus, \$75,000. Florence L. Johnston, Frank Tossey, Vera M. Bricker, Clarence M. Werum, Irene A. Wells.

The Campbell-Young Co., Cleveland, \$5,000. William L. Cole, John A. Campbell, G. M. Salmon, Bertha Bellew, Betty Endress.

The Heights Electric Co., Cleveland Hgts., \$10,000. A. C. Kaestle, W. E. McLaren, W. W. MacLaren, H. Kaes-

The A. R. Bennett Co., Toledo, \$10,000. Alfred R. Bennett, Alton W. Bennett, Edward M. Mansfield, Alfred A. Bennett, Charles T. Lambert.

The John W. Karch Stone Co., Celina, \$20,000. John W. Karch, Arthur Lisle Karch, John M. Karch, Sara Karch, Lou Mauree Karch.

The Sen-to Oil Co., Toledo, \$50,000. R. T. Garrison, Allen R. Partridge, Clyde E. Smith, M. M. Hearons, Emil Flick.

The M-B Lock Co., Cleveland, \$500. J. E. Bevington, James A. Muzzio, Jos. P. Muzzio, Edward W. Leeper, Robb O. Bartholomew.

The Morrow Public Service Co., Galion, \$90,000. George C. Stanford, Lewis G. Dye, Harry C. Dye, Kenneth C. Dye, Dean C. Talbott.

The Lakewood Printing Co., Cincinnati, \$3,000. Jos. C. Bahey, D. G. Marsh, Mrs. Mary Bahey, S. G. Wy-song, C. B. Greenaway.

The St. Clair Doan Co., Cleveland, \$500. Frank G. Mooney, Irwin N. Loeser, S. L. Waxman, L. Dunmer, I. L. Nichols.

The Simplicity Radiophone Mfg. Co., Cincinnati, \$500. I. A. Berman, E. B. Appleton, E. A. Staggenberg, E. J. Walker, V. E. Dickhaus.

The Otway Oil and Gas Co., Lucasville, \$30,000. Z. T. Liston, W. L. Reeg, Z. T. Mitchell, C. A. Gregory, Thos. J. Hartley.

Mitchell Oil Co., Bellaire, \$50,000. W. O. Houston, Chas. C. Sheets, S. J. Stilwell, Leo Schwob, W. A. Stellers, E. A. Feazel.

The Jewish Art Amusement Co., Cleveland, \$25,000. Abe Cogut, Ben Hersberg, P. M. Astor, Abe Loewenthal, Jacob Stacel.

The State Baking Co., Cleveland, \$5,000. Sam Levin, B. Levin, Eli Hartman, Isaac Greenbaum, Morris Podersky.

The Superior Finance and Service Co., Cleveland, \$10,000. John E. Bernstein, Morris Klein, Samuel Hacklan, Rita Schnittlinger, J. B. Dworken.

The Harry Scott Building Co., Cleveland, \$25,000. A. J. Halle, Philmore J. Haber, J. O. Stein, David Ralph Hertz, D. B. Stone.

The T. B. Armstrong Realty Co., Lakewood, \$10,000. Thomas B. Armstrong, David Williams, Etta L. Armstrong, Gladys S. Williams, O. D. Eshelman.

The Clark Gest Realty Co., Cincinnati, \$100,000. William B. Dunkman, Fred J. Wrassman, John J. Gilligan, John E. Sullivan, Michael J. Rebold, George A. Wiltsee.

The American Railway Operating Co., Elyria, \$20,000. A. D. Bowen, D. A. Glover, J. L. Birdsall, R. A. Williamson, L. B. Fauver.

The Real Estate Bond Co., Cleveland, \$10,000. Hugh M. Foster, A. Lakin, A. A. Wageman, K. C. Middleton, F. J. Barber.

The Rubin & Fredland Co., Canton, \$10,000. Leon. Rubin, Anna, Rubin, Maurice Fredland, Anna Fredland, M. J. Newman.

The Resco Radio Co., Cleveland, \$5,000. John A. Elden, J. G. Janes, F. C. Moore, M. E. Molner, M. H. Burns.

The C. J. Huy Dairy Co., Cleveland, \$10,000. Christian J. Huy, Harvey C. Huy, Howard H. Huy, George Walter, Oswald Kobelt.

The West End Co., Toledo, \$60,000. E. H. Cady, Paul W. Kirchmaier, Watson C. Cady, E. G. Kirby, A. M. Chesbrough.

The Goldsmith Sons Co., Cincinnati, \$750,000. Oscar Goldsmith, Edgar J. Goldsmith, Hugo Goldsmith, Rufus B. Hall, Jr., Charles C. Benedict.

The Eno Sales Co., Cleveland, \$10,000. Clark T. McConnell, Ralph W. Sanborn, M. Kubik, Harry F. Pattie, H. M. Klima.

The Hydro Novelty Co., Mansfield, \$50,000. Gail Allenbaugh, Clara Allenbaugh, Clifford McFarland, Philip Willett, Betty Willett, Kathryn McFarland.

The Radiograph Co., Cleveland, \$25,000. John A. Elden, M. E. Molner, M. A. Burns, F. W. McLean, G. Adams.

The Cleveland Ventilating & Mfg. Co., Cleveland, \$50,000. Adolph H. Shagrin, M. G. Harrison, H. Goodman, M. L. Harrington, I. Grohs.

The Euclid Auto Top and Painting Co., Cleveland, \$10,000. Joseph Auerbach, Harry Auerbach, Lewis Oif, Alice P. Cook, Herbert Kohlman.

The Bartlett Life Saving Cork Co., Cleveland, \$15,000. M. P. Prendergast, Edw. C. H. Bartlett, John F. Blanchfiel, L. E. Siemon, Sam B. Fitzsimmons.

The Tecumseh Cold Storage Co., Toledo, \$500. Alexander Arnold, John Shoepfle, Samuel Kohn, Ralph S. Kohn, W. M. Rosevear.

The Community Reed Products Co., Perrysburg, \$10,000. Frank Kaltenmark, Fred L. Mahr, Thomas M. Franey, Geo. J. Munger, Henry Rhoda, Nicholas Len.

The J. W. Warren Co., Cleveland, \$500. J. W. Warren, Sidney E. Elsner, Sylvester Marx, Everett E. Loeb, Jack A. Persky.

The M. C. Stone Co., Cleveland, \$500. Frank G. Mooney, Ira J. Warner, S. L. Waxman, O. E. Shaw, I. L. Nichols.

The Louise Stone Estate Co., Cleveland, \$500. Frank G. Mooney, Ira J. Warner, S. L. Wasman, O. E. Shaw, I. L. Nichols.

The Zerk Lubricator Co., Cleveland, \$500. John H. Watson, Jr., N. T. McGann, M. C. Brynes, M. C. Myers, B. E. Robertson.

The Jaffe Bros. Co., Cleveland, \$10,000. Meyer Jaffe, Alter Jaffe, Ray Jaffe, Eva Jaffe, Sam L. Jaffe.

The Norwood Realty Co., Norwood, \$10,000. H. L. McFarlan, T. J. McFarlan, Edwin J. McFarlan, Ruth McFarlan, Phineas S. Phillips.

The V. V. Coal Gravel and Transport Co., Zanesville, \$100,000. J. O. Sloan, W. L. Jamison, J. M. Vernon, J. MacVernon, R. H. Valentine.

The Pelay Bros. Catering Co., Canton, \$50,000. Cristaly Pelay, George Pelay, Gregory Pelay, Berry Pelay, Walter S. White.

The Norwalk & Shelby Railroad Co., North Fairfield, \$150,000. Wilbur Hoyt, S. L. Harvey, C. R. Irwin, J. L. Baugh, Frank Carpenter, A. W. Davis.

Increases

The Colonial Mortgage-Loan Co., Lima, from \$500,000 to \$1,000,000.

The Toolcraft Co., Cleveland, \$10,000 to \$75,000.

The First National Co., Columbus, from \$1,000 to \$1,000,000.

The Haggard & Schubert Co., Cincinnati, from \$10,000 to \$250,000.

The Knights of Columbus Home Association Co., Tiffin, \$10,000 to \$40,000.

The City Ice and Fuel Co., Cleveland, \$5,000,000 to \$25,000,000.

The Rockford Grain Co., Rockford, \$35,000 to \$45,000.

The Brockamp Supply Co., Cincinnati, \$10,000 to \$25,000.

The Clark Street Loan & Building Co., Cincinnati, \$1,000,000 to \$2,000,000.

The Cincinnati Last Co., Cincinnati, \$5,000 to \$15,000.

The Major Realty Co. Cincinnati, \$50,000 to \$100,000.

PUBLIC UTILITIES COMMISSION

No. 2600—In the Matter of the Application of The Cincinnati Traction Company for Consent and Authority to Issue not Exceeding \$725,000.00 First Lien, Series H-1 6%, and not to Exceed \$242,000.00 Second Lien, Series H-2, 6% Equipment Trust Certificates.—Prayer Granted.

(Dated July 7, 1922.)

This day, it appearing to the Commission from the verified allegations in said applications and the sworn statement and exhibits filed in connection, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, this matter came on for consideration upon the application of The Cincinnati Traction Company, (a corporation duly organized and existing under and by virtue of the laws of the state of Ohio), asking the consent and authority of this Commission to issue not exceeding \$725,000.00 first lien, series H-1, six per cent Equipment Trust Certificates, payable in ten installments annually from and after July first, 1922, and not exceeding \$242,000.00, second lien, series H-2, six per cent. Equipment Trust Certificates, payable in five installments annually from and after July first, 1922, for the purpose of acquiring seventy-five double-truck, single end, completely equipped motor cars.

The Commission, being fully advised in the premises, finds:

That the applicant has contracted to purchase seventy-five new, double-truck, single end, completely equipped motor cars, at a total consideration of not exceeding \$967,000.00, and

That the issue and disposition of applicant's said equipment trust certificates is reasonably required and necessary for the construction, completion, extension and improvement of its facilities and the maintenance and improvement of its service, as aforesaid, and not for replacements,

and is satisfied that consent and authority for the issue and disposition of said Equipment Trust Certificates should be granted. It is, therefore,

Ordered, That said The Cincinnati Traction Company be, and hereby it is authorized to issue its first lien, series H-1, six per cent. Equipment Trust Certificates, payable in ten installments annually from and after July first, 1922, of a principal sum not ex-

ceeding seven hundred and twenty-five thousand dollars (\$725,000.00) and its second lien, series H-2, six per cent. Equipment Trust Certificates, payable in five installments annually from and after July first, 1922, of a principal sum not exceeding two hundred and forty-two thousand dollars (\$242,000.00). It is further

Ordered, That said equipment trust certificates be, by the applicant, issued and delivered for the purpose of securing the possession and use, and upon the payment and discharge of all of said certificates, title to seventy-five (75) new double-truck, single end, completely motor cars, the purchase of which has been contracted by the applicant for a consideration not exceeding \$967,000.00, nor shall said certificates be issued for any other purpose whatsoever. It is further

Ordered, That, if and as there shall be any diminution in the aforesaid maximum purchase price for said cars, an equal principal amount of said certificates shall not be issued, and the authority herein granted for the issue and disposition thereof hereby is revoked. It is further

Ordered, That the applicant make verified report to this Commission of its acquisition of said cars, the actual consideration to be paid therefor, and the amount of such certificates so issued on said account.

And it appearing that the applicant now has mortgage bonds and notes issued and outstanding in excess of its issued and outstanding capital stock, it is further

Ordered, That the issue and disposition of said equipment trust certificates in excess of applicant's issued and outstanding capital stock, as hereinbefore provided, be, and hereby they are specifically consented to, authorized and approved.

✽

No. 2577—In the Matter of the Application of The Ohio Bell Telephone Company for Leave to Issue and Sell \$4,000,000.00 of Six Per Cent. Demand Notes.—Prayer Granted.

(Dated July 10, 1922.)

This day, after full hearing, due notice of the time and place of which was given to all parties in interest, this matter came on for final consideration upon the application of The Ohio Bell Telephone Company, (a corporation duly organized and existing under and by virtue of the laws of the state of Ohio), asking the consent and authority of this Commission to issue (\$4,000,000.00) four

million dollars, principal sum of six per cent. demand notes, the proceeds arising from the sale thereof to be used:

\$725,000.00 for the reimbursement, in part, of its treasury for the sum of \$733,357.65 actually expended therefrom, within the five years next preceding the date of the filing of the application herein and to the twentieth day of September, 1921, for capital purposes, none of which was obtained by the issue of stock, bonds, notes or other evidences of indebtedness, and not heretofore capitalized or authorized to be capitalized by order of this Commission, and

\$3,275,000.00 for the reimbursement, in part, of its treasury (as successor of The Ohio State Telephone Company) for the sum of \$3,284,338.30 actually expended therefrom, within the five years next preceding the date of the filing of the application herein and to the twentieth day of September, 1921, for capital purposes, none of which was obtained by the issue of stock, bonds, notes or other evidences of indebtedness, and not heretofore capitalized or authorized to be capitalized by order of this Commission.

The Commission, being fully advised in the premises, finds:

That, within the five years next preceding the date of the filing of the application herein and to the twentieth day of September, 1921, the applicant actually expended from its treasury for the acquisition of property, the construction, completion, extension and improvement of its facilities, and other lawful, capital purposes,

(1) As the successor of The Ohio Bell Telephone Company, the sum of \$733,357.65, and

(2) As the successor of The Ohio State Telephone Company, the sum of \$3,284,338.30, none of which was obtained by the issue of stock, bonds, notes or other evidences of indebtedness, and the capitalization of which has not heretofore been authorized by order of this Commission, and

That the issue of applicant's said demand notes of the principal sum of \$400,000.00 is reasonably required and the money to be obtained thereby, necessary for the reimbursement, in part, of applicant's treasury for the aforesaid uncapitalized, capital expenditures therefrom,

and is satisfied that consent and authority for the issue and disposition of said demand notes should be granted. It is, therefore,

Ordered, That said The Ohio Bell Telephone Company be, and hereby it is authorized to issue its demand notes, bearing interest at the rate of six per centum per annum, of the principal sum of four million dollars (\$4,000,000.00), and that said notes be

sold for the highest price obtainable but not less than the par value thereof. It is further

Ordered, That the proceeds arising from the sale of said notes be, by the applicant, devoted to and used for the following purposes, and no others, to-wit:

The reimbursement of the treasury of the applicant:

(1) As successor of The Ohio Bell Telephone Company, in part for the sum of \$733,357.65, and to the extent of \$725,000.00, and

(2) As successor of The Ohio State Telephone Company, in part for the sum of \$3,284,338.38, and to the extent of \$3,275,000.00,

which were actually expended therefrom, within the five years next preceding the date of the filing of the application herein and to the twentieth day of September, 1921, for the acquisition of property and other lawful; capital purposes, not heretofore capitalized or authorized to be capitalized by order of this Commission, and none of which was obtained by the issue of stock, bonds, notes or other evidences of indebtedness.

It is further

Ordered, That the applicant make verified report to this Commission of the issue and disposition of said notes and the expenditure of the proceeds thereof pursuant to the terms and conditions of this order.

✽

Advanced Utility Rate Proceeding No. 90—In the Matter of the Proposed Increased Rates of The North Baltimore Water and Electric Company for Water Service, Filed to Become Effective July 1, 1922.

(Dated June 30, 1922.)

This day this matter came on for further consideration upon the motion of the village of North Baltimore, Ohio, asking that The North Baltimore Water and Electric Company's proposed new schedule designated, P. U. C. O., No 1 providing certain increased rates and charges for water service furnished in the said village of North Baltimore, Ohio, to become effective July 1, 1922, be stricken from the files of the Commission for the reason that there is pending in the court of common pleas of Wood county, Ohio, a suit known as Cause No. 20093 involving the question of rates to be charged by said company for the furnishing of said service;

And the Commission finding that said motion does not show sufficient grounds upon which to reject said schedule, it is

Ordered, That said motion filed herein by the village of North Baltimore, Ohio, asking that said schedule P. U. C. O. No. 1, proffered by The North Baltimore Water and Electric Company to become effective July 1, 1922, be stricken from the files of the Commission, upon the grounds set forth therein, be and hereby it is overruled.

And the Commission proceeding now upon its own motion finding that the rates and charges provided in said schedule P. U. C. O. No. 1 are in consistent with the rates and charges fixed by an emergency ordinance passed by the council of the village of North Baltimore, Ohio, under date of June 14, 1922, certified copy of which is in the files of the Commission, it is further

Ordered, That said schedule P. U. C. O. No. 1, proffered by The North Baltimore Water and Electric Company providing increased rates and charges for water services furnished in the said village of North Baltimore, Ohio to become effective July 1, 1922, be and hereby it is rejected.

ATTORNEY GENERAL

A City or Village May Issue Refunding Bonds Under Section 3916, General Code, to Extend the Time of Payment of Any Indebtedness Created or Incurred Before the First Day of January, 1924. An Ordinance Passed Under Section 3916, General Code, Must be Published in the Manner Provided by Law.

(No. 3276—(Opinion Dated June 27, 1922.)

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

Gentlemen: The Bureau has requested the advise of this department upon the following questions:

"The village of Hicksville, Ohio, has three bonds of different issues maturing which they are unable to pay through their limitations of taxation as stated by them. The information they are seeking in view of these conditions is as follows:

Question 1. May bonds be issued under the provisions of section 3916 G. C., as amended, 109 O. L. 339, to provide funds for the payment of such bonds at maturity and the interest that has accrued on same to date?

Question 2. Would an ordinance providing for such debt extension bonds under the provisions of said section 3916 G. C., require publication as provided for in section 4228 of the General Code?"

The first question as relating to Section 3916 before its amendment, was considered and discussed by this department in an opinion (No. 1157, Vol. 1, Opinions of Attorney General for 1920, page 440) to the Bureau under date of April 16, 1920. It is merely necessary to add to that opinion that under Section 3916 as it now stands, whatever power to refund indebtedness was possessed by a municipal council prior to this amendment remains with respect to an indebtedness created or incurred before the first day of January, 1924. The conclusion therefore is that subject to the qualifications enumerated in the opinion referred to, and under the restricted circumstances therein mentioned, it would be lawful for a city or village to issue refunding bonds under Section 3916 to extend the time of payment of any indebtedness created or incurred before the first day of January, 1924.

Your second question requires consideration of Section 4227 of the general Code rather than of 4228 referred to in the Bureau's

letter, or of 4229, for Section 4227 provides what ordinances shall be published. Section 4228 provides for the medium of publication, and Section 4229 provides for the duration of such publication. The simple language of Section 4227 is that:

“Ordinances of a general nature, or providing for improvement shall be published as hereinafter provided before going into operation.”

The words requiring interpretation are “of a general nature.” In the opinion of this department an ordinance providing for the issuance of bonds which are to be a general charge on the tax duplicate is one “of a general nature.” No decisions exactly in point have been found, but it seems that the test is to be determined by the scope of the effect of the ordinance.

Electric & Gas Co. v. Orrville, 26 C. D., 43;
Johnson v. Elyria, 6 N. P., 372;
Knauss v. Columbus, 13 O. D., 200.

Applying this test, it is apparent that all the present and future taxpayers of the municipality will be necessarily and immediately affected by the ordinance; and this effect is different in degree merely from that which would be produced by the incurring of an original indebtedness.

It is therefore the opinion of this department that an ordinance passed under Section 3916 of the General Code must be published in the manner provided by law.

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A Village School District That is Situated in Two Different Counties, and Which is a Part of the County School District in Which the Greater Part of the Territory Comprising the Village District is Situated, May be Transferred from the County School District of Which it is a Part to an Adjoining County School District Under Provisions of Section 4696, General Code.

No. 3234.—(Opinion Dated June 17, 1922.)

Hon. Vernon M. Riegel, Director of Education, Columbus, Ohio.

Dear Sir: Acknowledgment is made of the receipt of your request for the opinion of this department upon the following:

“Section 4684 of the General Code is as follows:

‘Each county, exclusive of the territory embraced in any city school district and the territory in any village school district exempted from the supervision of the county board of education by the provisions of Sections 4688 and 4688-1, and territory detached for school purposes, and including the ter-

ritory attached to it for school purposes, shall constitute a county school district. In each case where any village or rural school district is situated in more than one county such district shall become a part of the county school district in which the greatest part of the territory of such village or rural district is situated.'

"Can a village district that is situated in two different counties and which is a part of the county school district in which the greatest part of the territory comprising the village district is situated, according to Section 4684, be transferred from the county district of which it is a part, to an adjoining county district under the provisions of Section 4696, G. C.?"

In considering this question it is proper to consider first the history of Section 4684, G. C., which you quote in your inquiry. This section as it now appears was enacted in 104 O. L., 133, and is a part of what is generally known as the Ohio school code of 1914. The section clearly describes what shall constitute a county school district, mentioning "the territory detached for school purposes, and including the territory attached to it for school purposes." This language is intended to cover all future transfers of school territory to or from the county school district, whether attaching or detaching school territory. It is apparent that at the time Section 4684 was enacted, which section describes the territory which shall constitute a county school district, the law-making body had notice of those village school districts and rural school districts which were situated in more than one county, as is the case in a number of instances throughout the state. The question then arose as to which county these districts, lying on both sides of a county line, should be attached when the new school code went into effect. Thus the closing sentence of Section 4684, upon which your inquiry rests, was enacted to take care of the situation as it existed at that time, for clearly it was necessary that these districts, composed of territory on both sides of a county line, should immediately function with one county school district or the other. This provision in question reads:

"In each case where any village or rural school district is situated in more than one county, such district shall become a part of the county school district in which the greatest part of the territory of such village (district) or rural district is situated."

It is noted in the above the language is that the district in question "shall become" a part of a certain county school district at the time of the starting off of the new system. The sentence in

Section 4684 does not say that a district of this type "shall remain" a part of the county school district, thus carrying the clear inference that the general assembly was legislating for that condition which existed at that particular time, leaving to future authority the right to attach or detach a district of this kind in later years, as those directly concerned might care to do, but it was necessary that at that time a district of this type should immediately become a part of a definite county school district for administrative purposes. The contemplation would be, too, that the district would keep that status until it should at a later time be detached from one county school district and attached to the contiguous county school district. It must be remembered that the county school district is not coterminous with the county itself, the policy being that county lines or township lines should be no hindrance to the establishment of proper school districts, that is, districts with contiguous territory where the best interests of the community could be served from the same school, regardless of established county lines or township lines. Under the school code of 1914, authority has been given to county boards of education to change the lines of their county school districts at will, the only requirement being that there shall be a union of action between different county school boards, where the territory lies near to the county line.

Section 4696, G. C., 109 O. L., 65, is a law of uniform operation throughout the state and it reads as follows:

"A county board of education may, upon a petition of a majority of the electors residing in the territory to be transferred, transfer a part or all of a school district of the county school district to an exempted village, city or county school district, the territory of which is contiguous thereto. Upon petition of seventy-five per cent. of the electors in the territory proposed to be transferred the county board of education shall make such transfer. A county board of education may accept a transfer of territory from any such school district and annex same to a contiguous school district of the county school district.

In any case before such a transfer shall be complete (1) a resolution shall be passed by a majority vote of the full membership of the board of education of the city, exempted village or county school district making or accepting the transfer as the case may be; (2) an equitable division of the funds and indebtedness between the districts involved shall be made by the county board of education, which in the case of territory transferred to a county school district shall mean the board of education of the county school district to which

such territory is transferred, and (3) a map shall be filed with the county auditor of each county affected by the transfer. When such transfer is complete the legal title of the school property shall become vested in the board of education of the school district to which such territory is transferred."

The above section provides that a county board of education may, after a petition has been filed by a majority of the electors residing in the territory to be transferred, "transfer a part or all of a school district of the county school district to * * * a county school district, the territory of which is contiguous thereto." The section further provides that if this petition contains the names of seventy-five per cent. of the electors in the territory proposed to be transferred, the county board of education is required to make such transfer. For a very full discussion of this matter, see Opinion 2434, issued to you September 21, 1921, and appearing at page 857, Vol. 2, Opinions of the Attorney General for 1921.

A further discussion of these petitions which may be prepared and presented under Section 4696, G. C., is found in Opinion 2917, issued on March 9, 1922, to Hon. J. E. Ladd, prosecuting attorney, Bowling Green, Ohio, and the following excerpts are taken therefrom:

"The county board of education may transfer for a part of a school district of a county school district; or it may transfer all of a school district of the county school district."

"The intent in Section 4696, G. C., as last amended is to take care of the rights and desires of the electors in a school district, hence the provision for the petition and the further provision for a mandatory transfer when seventy-five per cent. of the electors sign the petition."

It can hardly be conceived that the general assembly, in special session in 1914, in enacting the Ohio school code intended or desired that any school district in the state should forever after be arbitrarily and permanently attached to a certain county school district without giving the electors in those districts described in the closing sentence of 4684, G. C., the right to later say to what county school system they would prefer to be attached. If an arbitrary view were taken of this matter, a village district of rural school district, lying on both sides of a county line, would always be attached to a certain county school system when possibly a petition might show that the electors residing in the school district might be unanimous in their desire to be attached to the other county school system. Situations such as these are covered in

Section 4696, which says that the county board of education may transfer "all of a school district." The language here is "a school district" and this means any school district which might have occasion to use Section 4696, G. C., and among these districts are those of the kind which you describe in your question, that is, a village district that is situated in two different counties and which became for administrative purposes in 1914 a part of the county school district in which the greater part of the territory comprising the village district was located. The rights which flow to the electors in one school district of the state as regards school privileges belong to the electors resident in any other district of the state, and one of these rights is the right to petition to what school system the local district desires to belong.

You are therefore advised, in answer to your inquiry, that a village school district that is situated in two different counties, and which is a part of the county school district in which the greater part of the territory comprising the village district is situated, may be transferred from the county school district of which it is a part to an adjoining county school district, under the provisions of Section 4696, G. C.



The Fiscal Officer of the Subdivision Under Section 5649-1c Must Anticipate or Estimate How Much Money Will be Needed to Pay Final Judgments for the Coming Year. Leterally There is no Authority on the Part of Any One to Pay Final Judgments, Though Perhaps Enough Authority can be Construed by Inference from the Valid Portions of Sections 5648-1c and 2295-13 General Code for This Purpose. At Any Rate There is no Authority on the Part of the Treasurer of a Subdivision or Any One Else to Invest the Judgment Fund in Securities. Being General Moneys of the Subdivision it May be Placed in Depositories Under the General Laws.

No. 3286—(Opinion Dated July 1, 1922.)

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

Gentlemen: The Bureau recently submitted to this department a question concerning the interpretation of Section 5649-1c of the General Code, 109 O. L. 345, which provides as follows:

"On or before the first Monday in May of each year, the fiscal officer of the municipal corporation or other political subdivision shall certify to the council, county commissioners,

board of education or other tax levying authority of his political subdivision the amount of tax necessary to provide for the payment of final judgments against the political subdivision, except in condemnation of property cases, and said tax levying authority shall place such amount in the annual tax levy ordinance, resolution or other measure for the full amount certified."

The inquiry partly put in the language of the city solicitor who has raised the question, is as follows:

"I am unable to understand how the fiscal officer of the city can comply with section 16 of the Griswold Bill, by certifying to council the amount necessary to provide for the payment of final judgments against the city, unless this section means final judgments which have already been obtained. If that be true, that a person obtains a judgment against the city and such person would have to wait until the amount could be certified, as provided in section 16, then the city would have to pay interest for quite a while, as a judgment would naturally bear interest until it was paid.

Question. Or is it the meaning of this section that a fiscal officer shall merely approximate how much money will be needed to pay final judgments for the coming year?"

It may be said generally of the feature of what is known as the Griswold Act (of which the above quoted section is a part) that is exemplified by the section which is quoted that the act in this respect aims to effect a separation of the fiscal operation of paying final judgments from that of retiring funded debt. Prior to the enactment of the law in question these functions were united in municipal corporations. The former law (see Sections 4506 to 4522 inclusive of the General Code) provided for the creation of a single fund known as the "sinking fund" from which the funded debt and interest and final judgments were indiscriminately paid. This fund was administered by the board of trustees of the sinking fund. This fiscal scheme produced unfortunate results in smaller municipalities whenever a considerable amount of judgments had to be paid, and an impairment of the sinking fund from the point of view of the requirement of the funded debt resulted. As the practice (now recognized and required by the Griswold Act) of issuing serial bonds grew up in many of these places, this procedure tended to force the issue as between refunding of the bonded debt (a questionable procedure from the constitutional point of view) and temporary default. The situation was aggravated by the necessity existing in some of these places of permitting certain

classes of claims really current to go to judgment, the practical result of which was in many instances to raid the sinking fund for current expenses, and to live today by the expedient of avoiding the payment of yesterday's debts; or, put in another way, by referring simple contract creditors to bondholders.

These evils are met in the Griswold Act not only by the new provisions above quoted, but by appropriate amendment of Sections 4506, 4513 and 4517 of the General Code striking from each all reference to the levy of taxes for sinking fund purposes that shall include the payment of final judgments, and by the enactment of Section 2295-13 of the General Code which provides as follows:

"All moneys collected from taxes or other sources for the payment of final judgments against the political subdivision (other than condemnation of property cases) shall go into a separate fund of the subdivision, to be known as 'Judgment Fund.' All powers and obligations now vested by law in any board of sinking fund trustees or commissioners of any county school district, municipality or other political subdivision relating to the receipt, investment and application of funds raised by taxation or otherwise for the payment of said final judgments are hereby transferred to the treasurer of the subdivision. By an affirmative vote of not less than three-fourths of the members elected or appointed thereto, the county commissioners, board of education, city council or other chief tax levying authority of a political subdivision may transfer to the judgment fund from the bond payment or other fund of the subdivision any surplus in the latter not needed for the purpose of meeting the interest and retirement of the funded debt of the subdivision and which it deems necessary for the prompt payment of the said final judgments; provided that no such transfer shall be made from the sinking fund without the approval of the sinking fund trustees or commissioners."

But though this separation has been thus clearly made, it is the opinion of this department that there is discernible in this legislation no intent to alter the method of providing for the payment of final judgment further than by creating a separate fund for that purpose. This is clear we believe from the second sentence of Section 2295-13 above quoted, which transfers to the treasurer of the subdivision the powers and obligation formerly vested in the sinking fund authorities "relating to the receipt, investment and application of funds raised * * * for the payment of * * * final judgments." In other words by this simple legislative method of transfer the general assembly has declared it to

be its intention that the treasurer shall do with the separate judgment fund, once it is raised, precisely what the sinking fund authorities were formerly authorized to do. This point is important and will be referred to again in this opinion.

Approaching the problem from a slightly different angle, it is worthy of note that the phraseology of Section 16 immediately under examination closely follows that of original Section 4513 of the General Code, which section, as previously pointed out, was amended by the Griswold Act so as to eliminate therefrom all reference to the payment of final judgments. The original section reads as follows:

"Sec. 4513. On or before the first Monday in May of each year, the trustees of the sinking fund shall certify to council the rate of tax necessary to provide a sinking fund for the future payment of bonds issued by the corporation for the payment of final judgments, except in condemnation of property cases, for the payment of interest on bonded indebtedness, and the rents due on perpetual leaseholds of the corporation not payable from a special fund, and the expenses incident to the management of the sinking fund. The council shall place the several amounts so certified in the tax ordinance before and in preference to any other item and for the full amount certified. Such taxes shall be in addition to all other taxes authorized by law."

In this section it was rather clear that the fund for the creation of which the rate was required to be certified was a sinking fund—that is, a fund raised in anticipation of future obligations. That is to say, the amount of tax levied was not based upon immediate requirements in the sense of accrued obligations, but was predicated upon estimates or calculations as to future requirements. So much is apparent from the phraseology "to provide a sinking fund for the future payment of bonds, * * * for the payment of final judgments, * * * for the payment of interest."

But this meaning becomes increasingly apparent under the original law when certain other sections are examined. Section 4514 provides:

"The trustees of the sinking fund shall invest all moneys received by them in bonds of the United States, the State of Ohio, or of any municipal corporation, school, township or county bonds, in such state, and hold in reserve only such sums as may be needed * * *."

See also Section 4517 (amended in the Griswold Act so as to

eliminate reference to payment of final judgments as previously stated) which provided as follows:

"The trustees of the sinking fund shall have charge of and provide for the payment of all bonds issued by the corporation, the interest maturing thereon and the payment of all judgments final against the corporation, except in condemnation of property cases. They shall receive from the auditor of the city or clerk of the village all taxes, assessments and moneys collected for such purposes and invest and disburse them in the manner provided by law. For the satisfaction of any obligation under their supervision, the trustees of the sinking fund may sell or use any of the securities or money in their possession."

In short, the sinking fund trustees under the original scheme were to raise by taxation (or otherwise) a fund which was to be invested in securities or held in reserve to meet anticipated obligations. It is the opinion of this department that under the original law it was the duty of the sinking fund trustees to provide a reserve or sinking fund for the payment of judgments that might be rendered in the future. The policy was exactly the opposite of that suggested by the form of the solicitor's inquiry; that is, it was that the municipality should have a reasonable reserve on hand so that its judgment creditors could be promptly paid without the necessity of resort to drastic remedies or delay incident to the levy and collection of a tax after the judgment had been rendered. In short, judgment creditors were to be put, so far as practicable, in the same category with bondholders. And as a matter of fact, they were in that category, for the trustees of the sinking fund were authorized to and did customarily draw upon general sinking fund balances, as above stated, in satisfaction of final judgments.

Coming now to the Griswold Act, it will be observed that Section 16, as already stated, is very similar to old Section 4513 of the General Code so far as the latter refers to payment of final judgments. The only difference between the two is that whereas Section 4513 expressly provided that there should be one sinking fund, the purpose of which should be in part to pay final judgments, present Section 5649-1c does not refer to the proceeds of the tax as that for which it provides as a sinking fund but describes the amount of the tax as that necessary to provide for the payment of final judgments. This difference standing alone might become the basis of an argument to the effect that the intention of the general assembly was to change the procedure and limit the power and duty of the fiscal

officer to the certification of the amount of tax necessary to provide for the payment of final judgment previously rendered. That this was not the intention of the general assembly is, however, made clear by the second sentence of Section 2295-13, above quoted, wherein the general assembly attempts by the simple expedient of transfer above referred to, to authorize the treasurer of the subdivision to exercise all the powers and submit to all the obligations of the sinking fund trustees with respect, among other things, to the investment of funds raised for the payment of final judgments. This makes it clear that the intention of the general assembly was, as above stated, merely to separate the two funds without in any wise changing the nature of that part of the former fund which was raised for the purpose of paying final judgments.

It is therefore the opinion of this department that the words "to provide for the payment of final judgment" as used in Section 5649-1c of the General Code are to be taken in the sense of provision by anticipation. This would seem to be the natural meaning of the words even if the other indicia of legislative intent were not present in the act; for had the legislature intended that the taxes should be raised for the purpose of paying judgments already rendered, it would doubtless have omitted the words "provide for." But all doubt on this point is resolved not only by the considerations previously mentioned, but also by the fact that the first sentence of Section 2295-13, above quoted, provides for the existence of a judgment fund. Now, the word "fund" imports a continuing account. The legislature would not have created a fund for the payment of judgments if its intention had been that only judgments rendered prior to the tax levy should be paid therefrom.

All these conditions then require this department to answer the question submitted by the statement that the fiscal officer of the subdivision under Section 5649-1c must anticipate or estimate how much money will be needed to pay final judgments for the coming year. Of course, if some judgments have previously been rendered and are unpaid for want of funds, and are of such character that bonds cannot be issued for their immediate payment under Section 2295-8 of the General Code, there will be to that extent an element of certainty in his estimate; but it is clearly the intention of the general assembly that he shall anticipate the future on the basis of the experience of the past.

This department is regretfully obliged in passing to point out that the second sentence of Section 2295-13, above quoted, which has been referred to as indicative of the legislative intent is prob-

ably inoperative. It will be observed that it attempts to transfer "all powers and obligations now vested by law in any board of sinking fund trustees or commissioners of any county, school district, municipality or other political subdivision relating to the receipt, investment and application of funds raised by taxation or otherwise for the payment of said final judgments." Had the former sections of the General Code, such as 4517, remained in force without amendment this transfer clause would have been operative. Unfortunately, however, the general assembly at the same time amended all such sections so as to strike out of them all reference and application of funds * * * for the payment of said final judgments." So that there are now no statutes in the state (unless some unimportant ones have been overlooked) giving any sinking fund authorities any powers or imposing upon them any obligation with respect to the management of funds raised for the purpose of paying final judgments. Hence, the second sentence of the section must fail.

"The provision of Section 16 of Article II of the Constitution of Ohio, providing that no law shall be revived or amended unless the new act contains the entire act revived, or the section or sections amended, is mandatory. The inclusion, by reference, of the provisions of a repealed statute is in violation of this provision of the Constitution of Ohio and void.

The statute defining the duties, powers, liabilities and penalties imposed upon deputy assessors being repealed, the provisions of Section 17 of the act of the general assembly of Ohio, passed May 7, 1915 (106 O. L., 246), that the elected assessor 'shall perform all the duties, exercise all the powers and be subject to all the liabilities and penalties devolved, conferred or imposed by law upon the deputy assessor so appointed,' are unconstitutional and void."

State ex rel. v. O'Brien, 95 O. S., 167.

ment to any powers and obligations relating to the receipt, investment

The result of this situation is that literally there is no authority on the part of any one to pay final judgments, though perhaps enough authority can be construed by inference from the valid portions of Sections 5649-1c and 2293-13 for this purpose; at any rate, there is no authority on the part of the treasury of a subdivision or anyone else to invest the judgment fund in securities. Being general moneys of the subdivision it may of course be placed in depositories under the general laws. This situation should be remedied by legislation.

Council is Lawfully Authorized to Provide by Ordinance for the Apportionment and Disbursement of the City's Portion of Fines Received Under Section 6213-19, General Code, and Direct the Purposes to Which the Same May be Applied. Council May Create a Fund Into Which the Municipality's Portion of Fines Assessed for the Violation of the Crabbe Act Should be Paid for the Purpose of Future Disbursements, Which Council May From Time to Time Authorize by Ordinance.

No. 3231—(Opinion Dated June 17, 1922.)

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

Gentlemen: Receipt is acknowledged of your recent communication which reads as follows:

"Section 6212 General Code, provides that:

'Money received from fines and forfeited bonds shall be paid one-half into the state treasury, credited to the general revenue fund, and one-half to the treasury of the township, municipality or county, where the prosecution is held according as to whether the officer hearing the case is a township municipal or county officer.'

Question 1: In the absence of statutory direction governing the fund into which the municipality's portion should be paid, would it be legal for council to determine by ordinance that such fines be divided between the general, safety and service funds?

Section 3799 General Code, limits transfers among funds to those raised by taxation.

Question 2: Would it be legal for a municipality to create a fund into which such municipality's portion of fines assessed for the violation of the Crabbe act could be paid and then transfers be authorized from such fund to such other funds as determined by council?

Pertinent to your first question Section 6212-19, G. C., provides:

Sec. 6212-19. Money arising from fines and forfeited bonds shall be paid one-half into the state treasury credited to the general revenue fund, one-half to the treasury of the township, municipality or county where the prosecution is held, according as to whether the officer hearing the case is a township, municipal, or county officer."

It is observed that the section quoted, clearly provides for payment into the state treasury one-half the fines received from prosecutions under Section 6212-17, G. C., specifying in the instance that the same shall be credited to the general revenue fund. As to

the portion however of the fines to be retained by the township, municipality and county, the section is not so explicit; the language employed only going so far as to require that said fines be paid into the "treasury" of the proper authority, and without further direction as to what fund the same shall be credited. Under such circumstances therefore and in the absence of other lawful direction it may only be assumed that such monies should properly be credited to the general revenue fund of the municipality. However, it is to be noted in this connection, that Section 4298, G. C., is pertinent and provides as follows:

"Sec. 4298. The treasurer shall demand and receive from the county treasurer taxes levied and assessments made and certified to the county auditor by authority of the council, and by the auditor placed on the tax list for collection, and from persons authorized to collect or required to pay them, moneys accruing to the corporation from judgments, fines, penalties, forfeitures, licenses, and costs taxed in the mayor's or police courts, and debts due the corporation, and he shall disburse them on the order of such person or persons as may be authorized by law or ordinance to issue orders therefor."

In similar vein Section 4240, G. C., clearly vests in council, except as otherwise provided by law, the management and control of the property and finances of the corporation. Hence it is concluded in the absence of other lawful provision that council is lawfully authorized to provide by ordinance for the apportionment and disbursement of the city's portion of fines received under Section 6212-19, G. C., and direct in the instance the purposes to which the same may be applied. Specific answer therefore to your first question is obviously in the affirmative.

Answer to your second question is thought to depend in the event upon the nature and purpose of the fund which council creates: that is to say, should council establish a fund for the sole purpose of serving as a holding fund from which future disbursements may be made at council's direction, it is believed that an affirmative answer may be given, since under such circumstances the same general result could only obtain, as if council had in the first instance directed the apportionment and disbursement of such fines. It would seem moreover that a fund created for the purpose of future disbursement could serve that purpose only by transfers or disbursements from such fund, since otherwise there would seem to be no reason or purpose for which the same might be employed. Bearing upon this question it is not

believed that the provisions of Section 3799, G. C., would prevent transfers or disbursements from such a fund as your second question indicates, since the purpose of the section is thought to be chiefly that of preserving the proceeds of the various funds for the accomplishment of the purpose for which the same was created. It would seem, however, that if other and definite purposes should be embraced in the establishment of such a holding fund, transfers or disbursements from this fund to others would be precluded by reason of the operation of Section 3799, G. C., which prohibits the transfer of monies from one fund to another, except in cases where the proceeds of the funds accrue from the principle of taxation. Upon such considerations therefore, it is believed an affirmative answer may be given your second question, provided the fund created by council is established merely for the purpose of future disbursements, which council may from time to time authorize by ordinance.

SECRETARY OF STATE

NEW CORPORATIONS

The Ace Battery and Supply Co., Dayton, \$40,000. Frank Crispin. Artie A. Smith, C. A. Garber, Wayne F. Lee, M. I. Hilgeman.

The Ohio Lesgas Co., Cincinnati, \$25,000. J. Culver Hartzell, Willis G. Durrell, H. P. Durrell, Roy C. Kendle.

The Ford Williams Coal Co., Wadsworth, \$40,000. Ford Williams, Chas. W. Williams, Ries A. Williams, Harry L. Williams, Warren A. Williams.

The Milford Center Telephone Co., Milford Center, \$18,000. Chas. Diehl, Fred Neer, R. B. Neer, H. P. Clouse, F. G. Fullington.

The Strauss-Todd Plumbing Co., Zanesville, \$5000. E. A. Strauss, C. H. Todd, J. W. Edwards, Mary W. Strauss, Carrie E. Reed, Anna K. Strauss.

The Burch-Laraway-Evans Co., Akron, \$20,000. Charles H. Burch, Judson S. Laraway, John H. Evans, Claud D. Evans, Harry Raymond Mader.

The Priore Realty Improvement Co., Columbus, \$200,000. Jos. V. Priore, E. U. Carfagna, Fred Salvatore, Andy Contosta, Harry Fraggiotti, Michael Priore.

The Losanti Realty Co., Cincinnati, \$25,000. Edward D. Woodward, Chris MacTaggart, E. R. Mohr, D. J. Starr, Jr., E. Starr.

The Musaquado Club Co., Cleveland, \$500. C. F. McConnell, G. R. Sizer, G. C. Hafley, M. L. Dilley, H. T. Hoffman.

The South End Motor Sales Co., Cleveland, \$25,000. John Roski, Leo Porocynski, John Michi, Frank Porocynski.

The Vergon, Son and Co., Delaware, \$153,000. James C. Vergon, Fred C. Vergon, C. Wilk Jaccaud, Glenn S. Sonner, Alvin V. Lind.

The Watt Pottery Co., Crooksville, \$50,000. C. L. Dawson, Harry N. Watt, Thomas F. Watt, Marion, V. Watt, Tom O. Crossan.

The Buck-Gutwein Shoe Co., Dayton, \$15,000. Theo Gutwein, Harry L. Buck, Flora Amos Buck, William G. Pickrel, Harry L. Buck, Glenna Gutwein.

The Stone & Williams Co., \$30,000. Columbus, Julius Stone, Peter K. Williams, Roy J. Stone, Louis A. Alcott, F. Westinghouse, Charles Miller.

The American Construction and Dredging Co., Cleveland, \$500. Harold H. Burton, R. D. Gottfried, S. M. Dill, D. Fay, James J. Laughlin, Jr.

The Peter Pan Co., Cleveland, \$5,000. Frank E. Peat, John H. Kapp, A. M. McNally, Herbert D. Palmer, H. Kappler.

The Quinby-Foster Co., Wooster, \$500. Edward M. Quinby, Margaret B. Foster, Walter C. Foster, Henrietta B. Quinby, L. D. Bowlin.

The Massie Baking Co., Mansfield, \$40,000. H. A. Massie, R. S. Holbrook, Claude R. Banker, Lucretia Massie, Geo. H. Lewis.

The Bell Modern Baking Co., Elyria, \$50,000. Fred Mason, L. P. Wagner, O. K. Eldred, W. W. Marlett, Lawrence T. Fay.

The Doan Realty Co., Cleveland, \$10,000. A. H. Goldman, S. A. Thorman, S. Z. Brown, William D. Singer, Wm. M. Isaacs.

The Cleveland School of Comestic Therapy and Beauty Culture Co., Cleveland, \$10,000. T. P. Titus, H. M. Milner, A. E. Reddy, E. I. Conrad, Adolf Kietz.

The Preston Clay Co., Canton, \$2,000. H. S. Preston, H. S. Williams, A. H. Elliott, F. E. Marsh, A. O'Leary.

The Daily Times Co., Martins Ferry, \$1,000. A. M. Shriver, A. H. Mitchell, Jr., T. N. Curtis, O. B. Truax, Willard Ball.

The Castle Garment Mfg. Co., Chillicothe, \$15,000. R. E. Hoffman, E. T. Somerset, R. R. Myers, J. W. Cooke, G. E. Neal, C. E. Egan.

The Peters Grocery Co., Cleveland, \$500. O. J. Peter, E. F. Peter, Julia Vathke, C. H. Vathke, H. W. Peter.

The Yarger Vulcanizing Co., Fremont, \$15,000. F. J. Yarger, E. F. Baskey, F. A. Yarger, M. E. Baskey, E. E. Babione.

The Reinbold Realty Co., Newark, \$50,000. K. A. Reinbold, F. A. Jones, P. E. Taylor, H. B. Dicken, Edward Kibler.

The Factory Holding Co., Cleveland, \$500. W. A. McAfee, A. B. Oakes, T. F. Veach, M. F. Hanning, B. C. Walsh. The Girard I. O. O. F. Temple Co., Girard, \$40,000. J. H. Behrends, F. Hood, Frank Morris, Leonard Hall, C. E. Fisher.

The McDorman-Pumphrey Co., Xen- it, \$40,000. C. H. Pumphrey, L. M. Pumphrey, E. N. Huggins, W. H. Lig- gett, E. M. Kirk.

The Murphy Coal Co., Columbus, \$75,000. E. F. McManigal, G. K. Mit- chell, H. H. Long, E. H. Davis, E. M. Marquand.

The Diaphragm Co., Cleveland, \$500 N. I. Young, Lillian Purman, D. K. Ford, M. L. McCave, Lillian B. Zweig.

The Roberts Storage Battery Co., Akron, \$1,000. N. O. Mather, R. H. Nesbitt, Wendell L. Willkie, N. E. Thomas, G. N. Neal.

The Woodworth Road Land Co., Cleveland, \$1,500. A. H. Fiebach, G. Pettit, A. E. Griffith, H. A. Shibley, M. O'Neal.

The Hamilton Engineering Co., Co- lumbus, \$50,000. H. F. Guerin, L. R. Wells, W. G. Wells, E. G. Robinson, R. E. Gearhart.

The St. Clair Milling and Grain Co., Ft. Recovery, \$50,000. C. L. Parker, W. H. Reese, Ed. Greeno, H. Brobst, C. J. Hosler.

The George Zehler Packing Co., Cincinnati, \$50,000. Geo. A. Zehler, R. A. Reynolds, H. L. Jump, J. W. Tuohy, W. J. Overbeck.

The Chalmers Battery & Ignition Co., Akron, \$30,000. R. J. Chalmers, H. J. Chalmers, R. A. Reese, Ruth, L. Weidner, Elizabeth A. Chalmers.

The Hartford Lunch Co., Akron, \$10,000. A. W. Twarz, Flora B. Twarz, E. F. Mench, H. G. Ream, P. E. Schmutz.

The County Savings and Loan Co., Cambridge, \$2,000,000. Geo. Heinicke, M. J. Zimmerman, W. A. Moore, M. R. Hoffman, C. F. Bruce.

The Maccabee Temple Assn., Kel- ley's Island, \$3,000. Fred Dischinger, Jas. Silfe, W. F. Becker, R. E. Brown, Edward Ward, W. F. Burger.

The West Boulevard Garage Co., Cleveland, \$10,000. J. T. Kelly, C. F. McCrossen, D. C. Wilson, Ella M. Stevenson, Mildred Greene.

The Clinton County Farmers Ex- change Co., Wilmington, \$200,000. W. R. Lewis, E. E. Haines, T. H. Bryan, Chas. Reynolds, Howard McCune, A. Jones.

The Akron Thermo-Meter and In- strument Co., Akron, \$5,000. F. S. Jones, H. W. Moir, George Foerstner, John Dorner, J. P. Dice.

The Burns-Quirck Co., Akron, \$30,- 000. F. B. Burch, E. E. Quirck, J. E. Burns, Anna K. Quirck, H. C. Burns.

The Toledo Beach Amusement Co., Toledo, \$10,000. J. C. Reid, H. T. Ir- win, G. P. Smith, Stella M. Hughes, Maurice Allen.

The Medina Clay Products Co., Chippewa Lake, \$5,000. B. L. Cas- sady, H. A. Hall, L. L. Cassaday, H. Hall, H. G. Hall.

The Wyoming Pocahontas Coal & Coke Co., Cleveland, \$2,000,000. P. J. Bickel, H. L. Barkdull, C. C. Owens, Frank Harrison, Teresa O'Brein.

The Paramount Estates & Mort- gage Co., Cleveland, \$500. G. M. Dory, J. C. Herbert, M. L. Deaver, M. T. Gorton, M. H. Sullivan.

The Commercial Galvanizing and Mfg. Co., Warren, \$500. T. E. Brom- ley, J. J. Lehet, B. F. Fletcher, R. C. Kulow, Frank Baker.

The Akron Paint Products Co., Ak- ron, \$50,000. C. F. Beck, E. A. Zeis- loft, Helen Hassler, M. H. Weyrick, R. B. Watters.

The Zee-Pan Constr. Co., Cleveland, \$10,000. C. N. Krieg, E. A. Stendel, E. W. McGraw, J. M. Andrus, A. R. Vanek.

The Reed-Edwards Co., Alliance, \$10,000. J. L. Edwards, Lottie C. Ed- wards, B. B. Reed, Wesley Edwards, Pearl Wykoff.

The Deep Well Engineeirng Co., To- ledo, \$100,000. W. H. Jeffrey, A. H. Brandon, Joseph Casper, I. C. Taber, J. E. Daniels.

The Style Studio Clothes Co., Ak- ron, \$10,000. N. M. Greenberger, M. B. Keller, H. A. Sullivan, J. D. Hotch- kiss, E. M. Wachner.

The Hayden's Victory Dry Cleaning Co., Cincinnati, \$100,000. F. L. Hay- den, F. J. Burtel, J. W. Cowell, H. M. Gregg, R. M. Hayden.

The Russel Shoe Co., Bellaire, \$1,- 000. J. G. Russell, Josephine Russell, Margaret H. Ault, S. S. Dawson, Ge- neva Peabody.

The Brunson Savings Bank. Colum- bus, \$100,000. Wm. Rindsfoos, J. F. Caldwell, W. W. Williams, F. C. Luck- hart, J. W. Wilson.

The Carl Krebs Co., Cleveland, \$10,- 000. Carl Krebs, V. J. Stark, O. P. Gray, Sylvia W. Gray, Vincent Stark, Sr.

The Liberty Building Co., Cleveland, \$10,000. W. W. Daviess, R. L. Menefee, Grant Lee, A. H. Elliott, W. W. Wilson.

The Komfy Kamp Kit Co., Kenton, \$25,000. H. E. Jones, R. V. Coutts, Maybelle Sorgen, Frank Gill, J. A. Ryan, N. J. Alexander, W. C. Emery, Wm. Henderson.

The Amer. Constr. & Dredging Co., Cleveland, \$500. H. H. Burton, R. D. Gottfried, S. M. Dill, D. Fay, James J. Laughlin, Jr.

The Knapp-Maccar Truck Co., Akron, \$500. T. P. Knapp, C. G. Wise, D. W. Maxon, R. M. Cobbs, E. J. Larson.

The C. W. Bryant Co., Columbus, \$500. C. W. Bryant, H. C. Bryant, E. R. Bryant, L. H. Godman, Maria L. Bryant.

The Paramount Building Co., Cincinnati, \$10,000. Geo. Broemmer, C. Davis, E. C. Loevett, I. R. Rains, J. Bloomhoff.

The Wm. Seher Co., Lorain, \$90,000. Wm. Seher, W. F. Seher, Joseph Dominick, L. F. Giblin, J. H. Taylor.

The Fischer Motor and Implement Co., Hamilton, \$100,000. W. J. Fischer, Margaret K. Fischer, F. J. eHir, C. L. Jessup, N. Butterfield.

The Myers and Renner Co., Cincinnati, \$25,000. R. G. Braun, G. Fenner, E. C. Myers, George Renner, H. F. Siegler, George Bailes.

The McFarland and Son Co., Warren, \$10,000. M. E. Gillmer, D. E. Jones, O. A. Stephens, G. P. Gillmer, Pauline Jordan.

The Continental Discount Co., Cincinnati, \$100,000. C. E. Shearer, A. R. Miller, Howard Ferris, Sr., J. E. Shepard, Howard Ferris, Jr.

The Ray Electric Co., Cleveland, \$10,000. Joe Mintz, Anna Mintz, Isaac Swirsky, Max Gellin, Weltman.

The Home Chattel Loan Co., Zanesville, \$500. J. W. Keller, E. E. Ritchie, H. A. Willer, R. V. Plummer, H. A. Mangold, R. S. Cosgrave.

The Stuart Co., Cleveland, \$10,000. H. D. Weinstein, W. J. Hays, C. M. Hamilton, Margaret Becker, Gertrude H. Smith.

The Fourth District Co., Cleveland, \$10,000. E. M. Murdock, Orra Gross, W. D. Held, G. A. Konkel, O. P. Moore.

The Vance Motor Co., Cleveland, \$50,000. D. A. Christopher, W. L.

Vance, M. S. Vance, Mrs. Joseph H. Schlund, Walter Mueller.

The Dayton Baking Co., Dayton, \$10,000. J. M. Schaedler, Jay Leach, E. A. Auerhammer, L. E. Swope, N. E. Nolan.

The Hartwig Realty Co., Cleveland, \$10,000. Edith Ditzler, J. J. McGinness, May Hartwig, R. B. Hartwig, O. D. Eshelman.

The McConnell Savings & Loan Co., Cleveland, \$500,000. C. F. McConnell, M. L. Dilley, G. C. Hafley, H. E. Davis, C. L. Wessel.

The P. Milliron Transfer & Storage Co., E. Liverpool, \$25,000. Pete Milliron, Chas. Kunkle, Margaret Milliron, Martin Brazka, John Brozka.

The Hooven-Huffman Co., Dayton, \$1,000. C. C. Hooven, G. P. Huffman, J. M. Huffman, E. F. Lipp, G. C. Pohlmeier.

The Pramb Realty Holding Co., Cleveland, \$500. Michael Lazuka, S. Paliwoda, A. Brewka, W. Wolanski, P. Tarnavsky.

The Eaton Builders Supply Co., Niles, \$500. R. A. Cobb, M. E. Gillmer, J. G. Unger, Pauline Jordan, D. E. Jones.

The South Shore Constr. Co., Lorain, \$500. J. C. Hostetler, Paul Patterson, H. S. Brainard, T. L. Sidlo, B. F. Fiery.

The Highway Publicity Co., Cleveland, \$10,000. Wm. M. Madison, Ernest V. Hoagland, W. J. Benedict, W. Storey.

The Madeira Bldg. & Loan Co., Madeira, \$500,000. H. J. Gould, R. S. Boileau, G. W. Swormstedt, F. P. Everhard, W. G. Meyer.

The Claravox Co., Youngstown, \$10,000. C. E. Semple, C. W. Semple, Jr., C. W. Semple, G. T. Wick, L. T. Wick, W. H. Foster.

The Lighting Service & Engineering Co., Cleveland, \$10,000. F. W. Striebing, W. W. Schwerer, Dr. C. A. Bolich, C. V. Hull, E. A. Hull.

The United Royalty & Drilling Co., Dayton, \$10,000. J. Altrichter, C. D. Miller, E. L. Becker, G. L. Sutton, C. Hough.

The National Pressed Gear Co., Canton, \$100,000. H. W. McQuaid, E. G. Strong, A. L. Lewis, C. E. Runyon, F. O. Rice.

The Chateau Realty Co., Dayton, \$50,000. J. F. Fout, H. J. Osban, F. D. Woodward, F. J. Hughes, E. T. Hertz.

The Far Hills Apartment Co., Dayton, \$200,000. J. E. Fout, F. J. Hughes, H. J. Osben, E. D. Woodward, E. T. Hertz.

The Toledo Automatic Brush Machine Co., Toledo, \$500. G. P. Greenhalgh, Conrad Jobst, J. R. Cowell, L. T. Williams, Edwin Williams.

The Beach City Realty Co., Beech City, \$5,000. Wilber Winifield, S. Shisler, A. B. Wingate, Charles Weimer, C. P. Cabbut.

The Lincoln Heights Dairy Co., Cleveland, \$20,000. M. E. Zimprich, G. Palda, C. N. Krieg, M. S. Cerrezin.

The C. B. Morganthaler Co., Cleveland, \$10,000. Virginia Glessner, E. Kopp, Rose Rush, Perry Fry, Thos. Stevenson.

The Sturgis Funeral Co., E. Liverpool, \$500. E. G. Sturgis, M. C. McArtor, Geo. Chadwick, J. G. Collins, Bertha V. McVay.

The Renouard Coal & Supply Co., Wellington, \$10,000. A. F. Renouard, C. E. Baker, C. J. Wass, H. O. Pratt, C. H. Renouard.

The Economy Novelty Co., Cleveland, \$5,000. Roy Middleton, Reuben Bonda, B. J. Rosen, J. G. Lipkin, Benj. Miller.

The Graham Clay Products Co., Conneaut, \$500. Chas. Follett, J. W. Eckelberry, C. M. Horn, F. J. Perkins, W. B. Stewart.

The EJBL Drug Store Co., Cleveland, \$10,000. M. C. Byrnes, N. F. McGann, D. R. Faist, M. C. Myers, J. T. Scott.

The Specialty Iron & Wire Co., Cleveland, \$10,000. J. R. Binder, D. T. Miller, E. M. Sanders, F. C. Sanders, Grace E. MacVeen.

The Teagle Grain & Supply Co., West Park, \$15,000. A. J. Teagle, H. L. Jollay, H. L. Parmenter, I. M. Grolle, D. K. Henderson.

The W. W. Blair Co., Cincinnati, \$15,000. McLean Blair, E. A. Johnson, H. C. Kennedy, H. Q. Blair, C. J. Hunt.

The Income Bond and Security Co., Canton, \$5,000. J. A. Rice Loren E. Souers, M. R. Huth, A. E. Rice, J. T. DeWitt.

The Hughes-Scott Service Co., Columbus, \$25,000. H. A. Scott, Mary Hughes, Edward Thompson, Elizabeth E. Scott.

The Citizens Savings & Loan Co., Rittman, \$500,000. J. H. Fisher, W.

J. Hullett, H. W. Burkle, O. T. McIndoo, B. D. Nowling.

The Globe Savings and Loan Co., Cleveland, \$5,000,000. G. M. Blau-man, M. H. Alpert, E. Creason, W. W. Stephens, R. C. De Ritis.

The Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees Build-Co., Cincinnati, \$10,000. E. H. Fitzgerald, Geo. S. Levi, G. F. Tierman, A. E. Silk, I. D. Mumley.

The Safety Automatic Toy Co., Dayton, \$30,000. L. G. Brinkman, U. L. Brinkman, J. H. Brinkman, H. J. Brinkman, W. E. Watson.

The Commercial State Bank Co., Carey, \$25,000. Leroy Wonder, C. E. Hunter, W. H. Phelps, W. H. Williams, G. A. Kemmerly, J. A. Newcomer, W. A. Perkins.

The Brown Clay Products Co., Canton, \$500. I. E. Brown, O. E. Smith, I. W. Little, L. M. Brown, D. E. Daniels.

The Gordon Motor Co., Youngstown, \$15,000. Philip Klafter, B. F. Kelley, W. P. Simon, J. R. Gorman, H. W. Gordon.

The Reelette Mfg. Co., Cleveland, \$1,000. W. F. Gregg, J. Hannan, J. G. Deamude, Catherine J. Gregg, A. T. Gregg.

The Shelby Cycle Frame Mfg. Co., Shelby, \$50,000. Andrew Zimmer, W. Merkel, S. E. Kuhn, W. D. Hood, A. D. Meiselbach.

The Rosewood Floral Co., Cleveland, \$10,000. W. J. Miller, M. J. Miller, H. I. Schumacher, J. H. Schumacher, C. K. Schumacher.

The American Army and Navy Stores Co., Cleveland, \$20,000. P. L. Gleckler, R. W. Gleckler, Amy S. Gleckler, Maud Gleckler, Ruth Paulin.

The Roosevelt Housing Ass'n., Cincinnati, \$5,000,000. A. H. Morrill, J. G. Stewart, G. A. Ginter, A. Goodman, J. A. Keadin.

The Structural Iron Worker's Co-operative Co., Cleveland, \$10,000. G. A. Solomon, A. F. Nelson, F. M. Fuqua, William Hammond, Frank P. Clark.

Increases

The Diamond Brick and Tile Co., Cleveland, \$50,000 to \$100,000.

The Union Savings Bank & Trust Co., Steubenville, \$250,000 to \$350,000.

PUBLIC UTILITIES COMMISSION

No. 2407—The Hanging Rock Iron Company, Complainant, vs. Norfolk and Western Railway Company, Defendant.

(Dated June 28, 1922.)

Finding.

Complainant is a corporation engaged in the manufacture of pig iron, through the operation of a blast furnace at Hanging Rock, Ohio. By complaint, filed October 21, 1921, and, as amended November 12, 1921, it alleges:

That complainant owns and operates within the Ironton Switching District of Ohio a blast furnace to separate iron from its ores and manufactures therewith and thereout, pig iron, and is engaged in the business of marketing, selling and shipping the products of said furnace;

That complainant's furnace is located approximately two and one half miles west of the furnaces located and being operated within the limits of the city of Ironton, and that complainant's furnace lies within the yard switching limits of said Ironton district;

That the said Norfolk and Western Railway Company has and operates no switch into complainant's plant, but it has and operates from an interchange track, placing freight upon said interchange track by its switching crews operating in said Ironton district;

That there are extant in said Ironton, Ohio, district, five other blast furnaces, all of which manufacture a product of the same and equal quality, and sell and market in the same territory, using the same grade of material for the manufacture of iron, paying the same price for labor, and are generally subject to the same freight rates for the hauling of all products that go to make said iron and the distributing of iron and other products of said furnace, except as hereinafter stated;

That it obtains its ores from which its products are produced and the fuel and material needed in the process of such production and manufacture, from the same sources as the other furnaces in said Ironton district, to wit, the ore from the Great Lakes; the lime from Piqua and Columbus, Ohio, and the coke from West Virginia, Kentucky and Ohio, and that the cost of purchasing are the same, but transportation charges are not the same as hereinafter pointed out;

That after said coke, needed by said furnaces in the Ironton district, is taken over in said Ironton yard, it becomes necessary to switch the same to said various and respective furnaces at points adjacent thereto, and convenient and ad-

vantageous for unloading, and for which switching said Norfolk and Western Railway Company makes a charge to complainant of seventy cents per ton, or approximately twenty-eight dollars (\$28.00) per car, for the placing of said car of coke upon the interchange track near complainant's plant, and for the switching of the identical kind of material to the remaining furnaces, a charge of seven dollars (\$7.00) per car is made, which would be approximately seventeen and one-half cents per ton, and in this service said railway switches and handles said car to each of said furnaces at the place of unloading, except, and except only what is known as the Etna furnace, and there it is placed upon an interchange track. The service of placing a car in said switching district upon complainant's interchange track being no greater service than the service rendered by said railway company to the remaining furnaces in said district;

That the charge imposed against it as is hereinbefore set out is arbitrary and discriminatory against complaint, and places complainant at an unfair disadvantage, causing complainant not less than sixty to sixty-five cents more for the manufacture of each and every ton of iron than at the remaining furnaces in said switching district, and that said charge ought to be modified, reduced and set aside, and a fair, just and reasonable charge, not to exceed seven dollars (\$7.00) per car, upon coke, for said service should be allowed and permitted to be charged by said railway company;

That there are other materials connected with the manufacture of iron and incident thereto, and being transported locally, and not connected with a through rate, that are switched by said complainant to and from the interchange track from which complainant's plant is reached, and that the same rate or charge per car should be fixed upon any and all other material which is being switched to or from said interchange track;

That said Norfolk and Western Railway has and maintains a connection with the Detroit, Toledo and Ironton Railway Company within said Ironton district, and that said Norfolk and Western Railway Company receives freight and switches same, delivering same to the other furnaces in said Ironton district, at a nominal charge ranging from \$5.50 to \$7.00 per car, but refuses to and will not receive cars and switch and deliver the same to complainant upon said charge so made to the remaining furnaces in said district, but insists upon and charges a local freight rate, which is many times more than the charge per car to the other furnaces in said district, and the Norfolk and Western Railway Company will likewise deliver cars for the other furnaces in said Ironton district at the same nominal price per car to said Detroit, Toledo and Ironton Railway Company, but it will not deliver from complainant a car to said Detroit, Toledo and

Ironton Railway Company other than upon a local rate, which, as hereinbefore stated, is many times the nominal price per car, and in either event of delivering or receiving for the other furnaces at Ironton, Ohio, the Detroit, Toledo and Ironton Railway Company generally absorbs the nominal charge per car by said Norfolk and Western Railway Company on its through freight, but the charge is so exorbitant and so excessive as made by said Norfolk and Western Railway Company against complainant in the matters set out in this paragraph that the Detroit, Toledo and Ironton Railway Company cannot afford to and will not absorb the same, making the same, so far as the Norfolk and Western Railway Company is concerned, highly discriminatory against complainant, and

That all matters herein set out relate to intra-state switching charges within the yard limits of the Norfolk and Western Railway Company in the Ironton furnaces switching district.

The defendant filed a motion to require the complainant to make its complaint more definite and certain: (1) By stating specifically the rates, if any, complained of as unreasonable, and the commodities to which such rates complained of apply, and the points of origin and destination; (2) By stating what rates, charges or practices, if any, are complained of as being unjustly discriminatory. A hearing on the motion was had on December 5, 1921, and at said hearing it developed that the entire complaint hinged on a question of fact, as to whether or not complainant's plant is located within the Ironton switching district. We found that the complaint was sufficiently accurate and, consequently, the motion was overruled.

We quote the following from the record:

"Chairman Poor: Before you commence, Mr. Johnson, as I recall this case before, I believe you were not here at the time the motion was heard?

Mr. Johnson: No, I was not. Mr. Jones was here.

Chairman Poor: It was conceded then that the complaint in this case, when boiled down, went to the allegation that your complainant here was within the switching limits of Ironton?

Mr. Johnson: Of the Ironton district.

Chairman Poor: Yes; so it is a question of fact as to whether your complainant is within that district?

Mr. Johnson: I think that is the very meat of this matter, if your honors please." (Record, page 5.)

"Chairman Poor: In regard to your third proposition that you expect to put in a rate, has that charge been made by the complainant in this case that this is an unreasonable charge for the service performed? As I understand it, the

complainant's sole question rests upon the proposition that there is discrimination between the charge made to the Hanging Rock furnace as compared with the charges made to the other furnaces, the Hanging Rock furnace being within the same switching limits that they are in. The question of the reasonableness of the charge has not been brought into the matter at all, as I understand it.

Mr. Johnson: We offered no evidence on that.

Chairman Poor: No evidence has been offered in regard to it, so it seems to me we are limited in this matter. There is no use going outside the record. It is just a question whether the Hanging Rock property is within the same switching limits as these other furnaces." (Record, page 49.)

The following appears at page 2 of the complainant's brief:

"We are not going to dispute opposing counsel's contention that the question here is whether or not the Hanging Rock furnace is within the Ironton switching limits. This is known as the Hanging Rock iron furnace district, and has been so known since the first furnace was erected, which was at Hanging Rock."

From the foregoing it will be noted that the complaint has been narrowed down to a question of fact, namely: Is complainant's plant located within the Ironton switching district?

Hanging Rock is a local station on the Norfolk and Western Railway and, according to the Official Guide, is located three miles west of Ironton. The record shows that Hanging Rock, east corporation line, is one mile distant from the west corporation line of the city of Ironton, Ohio. There is no direct connection at Hanging Rock between complainant's plant and the tracks of the defendant. The defendant receives from and delivers all cars to the complainant upon an interchange track, hereinafter called the "Hanging Rock Interchange." Carload traffic between the Hanging Rock Interchange and complainant's plant is handled by The New Castle and Ohio River Railway Company, a short-line railroad owned by the stockholders of the Hanging Rock Iron Company. The defendant has established yard limits, known as the Ironton yard limits, extending from a point east of the Ironton corporation line, through the entire city of Ironton, to a point approximately one mile west of the Hanging Rock interchange. Within such yard limits, the defendant claims, by its tariff publication, to have defined a switching territory, known as the "Ironton switching district," the limits of which, defendant contends, are not co-terminus with the Ironton

yard limits and do not include the Hanging Rock interchange, (complainant's plant.)

Between any two firms, individuals or industries, having private or assigned sidings (including connection with the Detroit, Toledo and Ironton Railroad) within the so-called Ironton switching district, the defendant, with certain minor exceptions, charges a flat rate per car for transporting coke and other commodities; but for transporting the same commodities between private or assigning sidings (including connection with the Detroit, Toledo and Ironton Railroad) located within said switching district, and the Hanging Rock interchange (complainant's plant), the defendant charges higher rates on a per ton or per hundred basis.

The record shows that in normal times seven or eight yard engines and crews operate within the Ironton yard limits and when complainant's furnace is in blast, carload traffic between industries in Ironton (including connection with the Detroit, Toledo and Ironton Railroad) and Hanging Rock Interchange, is handled by one of these yard engines and crews, although in a few instances in the past the service was performed by a road engine and crew. During the past eighteen months, all traffic between Ironton and Hanging Rock interchange has been handled by road engines and crews on account of complainant's furnace being shut down. It is complainant's contention that the Hanging Rock interchange is included within the Ironton switching district because it is located within the Ironton yard limits and when complainant's furnace is in blast, the movements between Ironton and Hanging Rock interchange are performed by switching engines and crews under circumstances and conditions similar to other movements within the switching district.

The record shows: (a) That the Ironton yard limits were established by defendant's operating department, for the purpose of safety and to facilitate operations in a congested district by permitting movements without time table or train order authority; (b) that the switching limits at Ironton and elsewhere on the Norfolk and Western Railway are designated by defendant's traffic department through tariff publications, and (c) that the boundaries of yard limits and switching limits are not necessarily identical.

N. & W. tariff No. 15494-C, Ohio 1787, is a local and proportional freight tariff publishing reciprocal switching, intra-plant, intra-terminal and inter-terminal, transportation rates at Ironton and other points on the defendant's line. It reads, in part, as follows:

Section No. 1.

Reciprocal Switching Rates.

The Norfolk and Western Railway will switch traffic for firms, individuals or industries, having private or assigned sidings, as listed in Sections 3 on pages 5 to 8, inclusive, of tariff; also traffic to and-or from public team tracks, only to the extent providing in notes specifically referred to below, within switching limits of the various towns or switching districts indicated, and interchange tracks with connecting lines as shown below when originating at or destined to points beyond the switching limits of the same town or switching district at the charges shown:

Rates Apply Per Car Regardless of Weight, Except Where Otherwise Shown.

Town or Switching District	Interchange Tracks With	Rate
Iron-ton, Ohio	Detroit, Toledo & Iron-ton R. R.,	\$5.50

Section No. 2.

Intra-Plant, Intra-Terminal and Inter-Terminal Transportation Rates.

The Norfolk & Western Railway will transport traffic between points on its own rails within the same town or switching district indicated below, at the rates shown:

Rates Apply Per Car (Except Where Otherwise Shown) Regardless of Weight.

TOWN OR SWITCHING DISTRICT	Between any two firms, individuals or industries having private or assigned sidings as listed in Section 3 on pages 5 to 8, inclusive; within the same town or switching district.	Between firms, individuals or industries having private or assigned sidings as listed in Section 3, on pages 5 to 8, inc., within switching limits and interchange tracks with connecting lines as shown below when originating at or destined to sidings or connecting lines within switching limits of the same town or switching district to and from which connecting lines perform transportation service as indicated in tariff of such lines lawfully on file with the Interstate Commerce Commission and various state commissions.	
		When car is not furnished by connecting line	When car is furnished by connecting line
	INTERCHANGE TRACKS WITH: D. T. & I. R. R.	\$7.50	\$7.00
Iron-ton, Ohio	\$7.00		

Section No. 3, page 7, contains a list of the firms, individuals and industries having private or assigned sidings within the Iron-ton switching district as referred to in Sections 1 and 2. The list does not include the Hanging Rock interchange or complainant's plant, and the most westerly concern shown therein is the Standard Oil Company, which is located $1\frac{3}{4}$ miles east of the Hanging Rock

interchange. It appears that the tariff, above referred to, sufficiently defines the limits of the Ironton switching district and that the Hanging Rock interchange (complainant's plant) is not located therein.

Regarding the reasonableness or unreasonableness of defendant's rates for transporting coke and other commodities between private or assigned sidings (including connection with the Detroit, Toledo and Ironton Railroad) within the Ironton switching district and the Hanging Rock interchange (complainant's plant), we express no opinion.

Upon consideration of the whole record, we find that the Hanging Rock interchange (complainant's plant) is not located or included within the Ironton switching district.

The complaint should be dismissed.

Order.

This matter was submitted upon the pleadings, the evidence and exhibits, and the argument of counsel.

Upon consideration whereof, and being fully advised in the premises, and having this day made and filed in writing its findings of fact herein, the commission further finds:

That the plant of the Hanging Rock Iron Company, at Hanging Rock, Ohio, and the point of interchange of the tracks of The New Castle and Ohio River Railroad Company with the tracks of defendant, Norfolk and Western Railway Company, are not located within the limits of the Ironton switching district of the defendant, and

That, as to all other matters and things herein involved, no testimony was offered by the complainant.

It is, therefore,

Ordered, That the said complaint of the said Hanging Rock Iron Company be, and hereby the same is dismissed.

✽

No. 2602—In the Matter of the Application of The Midwest Power Company, for Permission to Purchase, and S. H. Beadle, to Sell an Electric Light and Power Plant at Utica, Ohio. Prayer Granted.

(Dated July 19, 1922.)

This day, it appearing to the Commission from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evi-

dence on file,, that the taking of oral testimony herein is unnecessary, this matter came on for consideration upon the joint application of S. H. Beadle, (the owner and present operator at Utica, Licking county, Ohio, of an electric distribution system, which he is engaged in expanding and, by the construction of a transmission line, with necessary substation installations, connecting with the lines of The Ohio Power Company), and The Midwest Power Company (a corporation duly organized and existing under and by virtue of the laws of the State of Ohio), asking the consent to and approval, by this Commission, of the sale, by the first named applicant, and the purchase by the latter of the aforesaid electrical utility property as reconstructed, extended, equipped and improved.

The Commission, being fully advised in the premises, finds from the pleadings and exhibits filed herein and its independent inquiry and investigation thereupon:

That, for purchase and sale purposes, the value of the said electrical utility property in and about the village of Utica, Licking county, Ohio, now owned by the said S. H. Beadle, as reconstructed, extended, equipped and improved in pursuance of the representations made in this proceeding in conformity to the specifications set forth in the exhibits filed herein, will be not less than the sum of \$58, 794.09, and

That the public will, upon the consummation of such proposed sale and purchase of said public utility property, be furnished adequate service for a reasonable and just rate, rental, toll or charge therefore,

and is satisfied that consent and authority for such sale and purchase of public utility property should be granted. It is, therefore,

Ordered, That the said S. H. Beadle be, and hereby he is authorized to sell to The Midwest Power Company the electrical utility property at Utica, Licking county, Ohio, as reconstructed, extended, equipped and improved by the construction and provision of a transmission line, with necessary substations and the real estate upon which the same is to be located, connecting such system with the system of The Ohio Power Company, together with all necessary and appurtenant franchises, rights, easements, contracts and business, as more fully described and set forth in the application herein and the exhibits appended thereto; and said The Midwest Power Company hereby is authorized to purchase the same and to pay therefor a consideration of \$58,794.09. It is further

Ordered, That, forthwith upon the exercise of the authority

herein granted, said parties file with this Commission schedules providing for their respective withdrawal from and inauguration of service within the territory served by means of said property. It is further

Ordered, That nothing herein shall be construed to be a consent to or approval, by this Commission, of any increase in rates or diminution of service within the territory now served by means of said property, nor shall the findings hereinbefore set forth as to the value of said property, rates or service, or the acquiescence in the passing of said consideration be binding upon this Commission in any future proceeding involving rates and/or service.

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No. 2603—In the Matter of the Application of The Midwest Power Company for Permission to Issue Common and Preferred Stock. Prayer Granted.

(Dated July 19, 1922,)

This day, it appearing to the Commission from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence on file, that the taking of oral testimony herein is unnecessary, this matter came on for consideration upon the application of The Midwest Power Company, (a corporation duly organized and existing under and by virtue of the laws of the State of Ohio), asking the consent and authority of this Commission to issue its common capital stock of the par value of \$28,500 and its seven per cent preferred capital stock of the par value of \$50,000, the proceeds arising from the sale thereof to be used: To pay the consideration for the property, to be acquired of S. H. Beadle under authority of the order this day made and entered in proceeding No. 2602, being an electric distribution system in and about the Village of Utica, Licking county, Ohio, connected, by transmission line, with the system of The Ohio Power Company; to pay the applicant's organization and other technical and preliminary expenses, and to provide a working capital.

The Commission, being fully advised in the premises, finds from the pleadings and exhibits filed herein and its independent inquiry and investigation thereupon:

That, for purchase and sale purposes the value of the said electrical utility property to be acquired of the said S. H. Beadle under authority of the order this day made and

entered in proceeding No. 2602, is not less than the sum of \$58,794.09;

That the applicant's reasonable organization expenses and other preliminary costs will be the sum of \$5,000.00, and its engineering fees, the sum of \$2,500.00;

That the applicant will require a working capital of not less than the sum of \$905.91, and

That the issue of applicant's preferred capital stock of the par value of \$50,000.00 and its common capital stock of the par value of \$27,200.00 is reasonably required, and the money to be procured thereby, necessary for the acquisition of property, the payment and discharge of indebtedness, and the maintenance and improvement of applicant's service as aforesaid,

and is satisfied that consent and authority for the issue and disposition of common capital stock of the par value of \$27,200 and preferred capital stock of the par value of \$50,000 should be granted. It is, therefore,

Ordered, That said The Midwest Power Company be, and hereby it is authorized to issue its common capital stock of the par value of twenty-seven thousand, two hundred dollars (\$27,200), and its seven per cent preferred capital stock of the par value of fifty thousand dollars (\$50,000), and that said capital stock be sold for the highest price obtainable, but not less than the par value of said common capital stock, nor less than eighty (80) per centum of the par value of said preferred capital stock. It is further

Ordered, That any discount arising from a sale of said preferred capital stock for less than the par value thereof be extinguished pursuant to the rules and regulations heretofore prescribed by this Commission. It is further

Ordered, That the proceeds arising from the sale of said capital stock be, by the applicant, devoted to and used for the following purposes, and no others, to wit:

The payment of the consideration for the reconstructed, extended, equipped and improved electrical utility property at Utica, Ohio, the purchase of which, by the applicant, was consented to and authorized by the order this day made and entered in proceeding No. 2602, \$58,794.09.

The payment of applicant's organization and other preliminary expenses and costs, \$5,000.00.

The payment of applicant's engineering fees, \$2,500.00.

To be used as a working capital, \$905.91.

It is further

Ordered, That the applicant make verified report to this Commission semi-annually, within fifteen days after the close of each calendar, semi-annual period, of the issue and disposition of its capital stock and the expenditure of the proceeds thereof pursuant to the terms and conditions of this order. It is further

Ordered, That said application, in so far as it asks consent and authority for the issue and disposition of common capital stock of the additional par value of one thousand, three hundred dollars (\$1,300) be, and hereby the same is denied.

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No. 2595—In the Matter of the Proposed Sale by The Utica Gas and Electric Company, a Corporation Located and Doing Business in the Village of Utica, Licking County, Ohio, of Part of Its Property in Said Village to S. H. Beadle. Prayer Granted.

(Dated July 19, 1922.)

This day, it appearing to the Commission from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence on file, that the taking of oral testimony herein is unnecessary, this matter came on for consideration upon the joint application of The Utica Gas and Electric Company, (a corporation duly organized and existing under and by virtue of the laws of the State of Ohio), and one S. H. Beadle, asking the consent to and approval, by this Commission, of the sale, by said first-named applicant, and the purchase by the latter, of the business, franchises and distribution system of said The Utica Gas and Electric Company.

The Commission, being fully advised in the premises, finds from the pleadings and exhibits filed herein and its independent inquiry and investigation thereupon:

That, for purchase and sale purposes, the value of the electric distribution system of said The Utica Gas and Electric Company is not less than the sum of \$14,500.00, and

That the public will, upon the consummation of said contemplated sale and purchase of said property, be furnished adequate service for a reasonable and just rate, rental, toll or charge therefore,

and is satisfied that consent and authority for said proposed sale and purchase of said public utility property should be granted. It is, therefore,

Ordered, That the said The Utica Gas and Electric Company

be, and hereby it is authorized to sell and convey to S. H. Beadle its electric distribution system in the Village of Utica, Licking county, Ohio, together with all franchises and business connected therewith and appurtenant thereto; and the said S. H. Beadle hereby is authorized to purchase the same and to pay therefor the agreed consideration of fourteen thousand, five hundred dollars. It is further

Ordered, That, forthwith upon the exercise of the authority herein granted, said parties file with this Commission schedules providing for their respective withdrawal from and inauguration of service within the territory now served by means of said property. It is further

Ordered, That nothing herein shall be construed to be a consent to or approval, by this Commission, of any increase in rates or diminution of service within the territory now served by means of said property, nor shall the findings hereinbefore set forth as to the value of said property, rates and service, or the acquiescence in the passing of said agreed consideration, be binding upon this Commission in any future proceeding involving rates and/or service.

ATTORNEY GENERAL

Where Power of Appointment is Made in a Will No Temporary Tax Under Section 5343, General Code, Should Be Imposed on the Succession.—The Proper Form of Entry is that No Taxable Succession Takes Place.

No. 3237—(Opinion Dated June 20, 1922.)

Tax Commission of Ohio, Columbus, Ohio:

Gentlemen—Some time ago the Commission requested this department to reconsider Opinion No. 497 for the year 1919, and particularly the following statement in that opinion which dealt with paragraph 4 of Section 5332 of the General Code:

“This is only half, however, of the intent embodied in the paragraph; for the paragraph aims to clear up what would otherwise be a doubtful question as to the application of the tax to an estate passing under a power of the kind described or because of failure to exercise it. You will observe that it is not the will of the testator (or grantor—for such powers can be created by deed as well as by will) that has the effect of ultimately vesting the estate in the appointee or appointees, but it is the concurring will of the testator or grantor, as the donor of the power and the donee of the power that brings about this result. This question becomes particularly difficult of solution when (as is very frequently the case) appointment is made by the will of the donee of the power, as in the second case above supposed. There the property passes from the original donor to the ultimate successor as the cumulative result of two wills—one that of the donor, and the other that of the donee of the power. One possible result of such a situation in the absence of a specific statute governing the case might be the double taxation of the succession—one as a contingent remainder arising under the first will, and again as a fee arising under the second will. To avoid this the paragraph provides that such a transaction shall be deemed a succession taking place at the time of the exercise of the power of appointment. Similar, as to failure to exercise the power of appointment. The law provides that the resultant devolution of estates shall be regarded as taking place as the result of the conduct—that is to say the will or intent—of the donees of the power rather than as the result of the act of the original donor.

Exhaustive notes illustrating the holdings of the courts on such questions, both under statutes of this kind and under the common law, as affecting inheritance taxes are found in 33 L. R. A. (N. S.) 236; and L. R. A. 1918-D, 339.”

The statutory provision requiring interpretation may be quoted, as follows:

"4. Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property heretofore or hereafter made, such appointment when made shall be deemed a succession taxable under the provisions of this subdivision of this chapter in the same manner as if the property to which such appointment relates belonged absolutely to the donee of such power, and had been bequeathed or devised by said donee by will; and whenever any such person or corporation possessing such power of appointment shall omit or fail to exercise the same within the time provided therefor, in whole or in part a succession taxable under the provisions of this act shall be deemed to take place to the extent of such omission or failure, in the same manner as if the persons, institutions or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise the same, taking effect at the time of such omission or failure."

It will be observed that this section, though it does require the taxation of the succession occurring by and through the exercise or failure to exercise of a power of appointment, does not specifically provide against the taxation of the interest covered by the power of appointment under Section 5343 of the General Code as a contingent estate arising under the will of the donor of the power if the power was created by will. To that extent the language above quoted from the former opinion rests upon inference rather than the express language of this particular paragraph.

If there were no statute like paragraph 4 of Section 5332, the result of a transaction of the kind to which it refers would undoubtedly be that the succession arising by virtue of the exercise or non-exercise of the power would be considered to have taken place in the estate of the donor of the power.

Emmons v. Shaw, 171 Mass. 410;
Walker v. Treasurer, 221 Mass. 600;
Hill v. Treasurer (Mass.) 118 N. E. 891;
Commonwealth v. Williams, 13 Pa. 29.

So that unless paragraph 4 of Section 5332 be looked upon as a substitute for this rule instead of as cumulative of it, double taxation will result.

Though it has been hereinbefore said that paragraph 4 says nothing definite on the subject in hand, yet it does provide that the succession arising in case of the exercise of, and in case of the

failure to exercise the power, shall be deemed successions taxable "in the same manner as if the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by said donee by will." This means, if it means anything, that for inheritance tax purposes the succession shall be deemed to have taken place in the estate of the donee, even though the power is not exercised by will, and it seems reasonable and just to assume that the legislature meant—as it seems to have come very near saying—that, conversely, these events should not constitute successions in the estate of the donor.

But this is the very construction that has been given to similar statutes where the question has been raised. See

In re Walroth, 72 N. Y. Supp. 984;

In re Tucker, 59 N. Y. Supp. 699;

In re Hull, 97 N. Y. Supp. 701;

In re Howe, 83 N. Y. Supp. 825; 136 N. Y. 570; (Discussing the application of the highest possible rate section.)

In re Dimock, 168 N. Y. Supp. 584;

Attorney General v. Thorpe (Mass.) 119 N. E. 171.

Accordingly, the former opinion is adhered to.

The Commission's recent letter also states a specific case as follows.

"Our attention has now been called to a will by which a power of appointment is vested in a son of the testator which will also contains a provision to the effect that if such son shall not exercise the power so vested in him the property shall pass to an institution of the sort included in paragraph 3 of Section 5335.

The question now arises as to the duty of the court under Section 5343.

Under the will containing such a provision over as is outlined above, should tax be determined in the proceeding in the estate of the testator and at the same time other inheritance taxes are being adjudicated thereon? Or, should the entry in the original estate find that as to the succession covered by the power of appointment, no adjudication could then be made and let the tax be determined in a preceeding to be hereafter instituted on the estate of the son?"

Consistently with the above general statements, it is the opinion of this department that no temporary tax under Section 5343 should be imposed on the succession. The proper form of entry is simply to state that no taxable succession takes place with respect to such remainder rather than to postpone the taxation of the succession in the estate.

These conclusions require some elaboration. For if a similar question had arisen in New York the assessment would probably be postponed or made according to the highest possible rate instead of the succession being held free from tax in the estate of the donor. Though the Ohio statute is in almost every other respect substantially similar to that of New York, this is one of the instances in which it differs materially from the New York statute. The discussion of the difference in language between the two and the practical difference in the respective results to be reached under them can perhaps be best developed by a short historical statement.

In 1897 New York amended its transfer tax by inserting in Section 220 of Chapter 284, which was Chapter 908 of the laws of 1896, certain paragraphs, one of which was almost verbatim the same as paragraph 4 of Section 5332 of the present Ohio law above quoted. Like the Ohio statute, it taxed as a succession from the donee of the power, the creation of interests arising under all of the following alternative conditions:

- (1) Where the power was created before the amendment went into effect.
- (2) Where the power was created after the amendment went into effect.
- (3) Where the power was exercised.
- (4) Where the power was not exercised.

The validity of this section was attacked as retroactive in so far as it applied to cases falling at the same time within the first and fourth classes; that is, there the power was conferred by an instrument antedating in legal effect the passage of the amendment and the power was not exercised by the donee. This contention was upheld in *Matter of Lansing*, 182 N. Y., 238, relying upon *Matter of Pell*, 171 N. Y., 48. This case was followed in several later decisions unreported by the Court of Appeals, and in some later reported cases.

Matter of Spencer, 190 N. Y. 517;
Matter of Lewis, 94 N. Y. 550.

But in all these decisions where the question was raised, it was held, while that statute was in force, that where the power was exercised, though created prior to the passage of the act, its exercise was taxable under the amendment. Following these decisions New York amended her statute so as to be consistent with the cases. As now in force, it provides as follows:

"Whenever any person or corporation shall exercise a

power of appointment derived from any disposition of property, made either before or after the passage of this chapter, such appointment when made shall be deemed a transfer taxable under the provisions of this chapter in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will."

In short, this statute merely declared the result of the decisions of the New York courts under the earlier statute.

In this condition of the case law and statutory law in New York, it was held that where the donee of the power so exercised it as to vest the interests subject thereto in the same persons and in the same manner as in whom and in which they would have vested if the power had not been exercised, the ultimate takers could elect to take under the instrument creating the power—i. e., directly from the donor—instead of under the exercise of the power. *Matter of Spencer*, *supra*; *Matter of Lewis*, *supra*; though if the persons were the same but the devolution among them is not precisely the same as it would have been had the power not been exercised, this rule did not apply. *Matter of Cooksey*, 182 N. Y., 92.

As a result of these decisions, then, the practical effect was, and under the present New York statute still is, apparently, that it cannot be told at the time of the creation of the power by will whether successions in the estate of the testator-donor will take place or not; and even after the exercise of the power by the donee this question remains undecided until the ultimate successors have elected, in case the exercise of the power produces a result identical with that which would have been produced by its non-exercise. But if the exercise of the power produces a different result, then there is no tax in the estate of the donor if the power was testamentary and one is to be determined as in the estate of the donee.

From all the foregoing it is apparent that we must determine whether we are to apply to the Ohio statute, which is identical with the New York statute held unconstitutional by the New York courts, the decision made and principles laid down by those courts. In order to answer this question we must trace the history of this New York statutory language outside of that state, for the statute was widely copied before the New York courts had held it unconstitutional; and after the New York decisions the courts of other states were confronted with the same question which had been decided in New York. Thus, in *Minot v. Stevens*, 207 Mass., 588, extensively annotated in 33 L. R. A. (N. S.), 236, the Supreme Judi-

cial Court of Massachusetts was asked on the authority of *Matter of Lansing*, supra, to strike down as unconstitutional the relevant part of the Massachusetts statute of 1909 providing as follows:

"Whenever any person shall exercise a power of appointment derived from any disposition of property made prior to September 1st, 1907, such appointment, when made, shall be deemed to be a disposition of property by the person exercising such power, taxable under the provisions of chapter 563, of the acts of the year 1907, and of all acts in amendment thereof and in addition thereto, in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power, and had been bequeathed or devised by the donee of the will. And whenever any person possessing such a power of appointment, so derived, shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a disposition of property taxable under the provision of Chapter 563 of the acts of the year 1907, and all acts in amendment thereof and in addition thereto, shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure."

It will be observed that this statute is wholly retrospective if any part of it is retrospective; that is to say, it applies only to powers arising prior to the taking effect of the law.

In an opinion which commends itself for its careful reasoning, and which relies so far as any federal question is concerned upon *Chanler v. Kelsey*, 205 U. S., 466, and *Moffit v. Kelly*, 218 U. S., 400, the court refused to follow *In re Lansing* and sustained the constitutionality of the statute above quoted. This decision is followed in *Burnham v. Treasurer*, 212 Mass., 165, and *Montague v. State*, 163 Wis., 58. Messrs. Gleason and Otis in their work on *Inheritance Taxes*, page 176, state that the original New York statute is in force in Colorado, Connecticut, Idaho, Massachusetts, Minnesota, Rhode Island, South Dakota and Wisconsin, to which we may add Ohio; and save in New York, it does not seem to have been successfully questioned.

It will thus be seen that the Ohio legislature in 1919 having these conflicting decisions before it, evidently cast its lot with the Massachusetts and Wisconsin courts; and for administrative purposes there is of course nothing for the Commission or this department to do excepting to assume that the Ohio statute is wholly con-

stitutional, and applicable strictly in accordance with its terms.

However, another point remains to be considered. This state has a specific constitutional inhibition against the enactment of retroactive laws, and in so far as any question might be involved with respect to the application of the statute to the exercise of powers created by instruments taking effect prior to June 5, 1919, (which does not appear in the Commission's letter), the application of this constitutional provision might have to be considered. In the absence of any specific question opinion will of course have to be reserved. It may be said, however, that the uniform construction of the Ohio constitutional provision referred to has been that it protects vested rights only; Article II, Section 28 of the Constitution of Ohio; *Rairden v. Holden*, 15 O. S., 207; whereas, the leading Massachusetts case above referred to is expressly predicated upon the following reasoning:

"The condition of property which is subject to a general power of appointment contained in a will or deed, and which, in default of appointment, is to be given over to persons named, is peculiar. The donee of the power has no title to it, but he has an absolute right to dispose of it by the exercise of the power. * * * His relation to it is very much like that of an owner. * * * Those who would take in default of an appointment have only an interest which is contingent upon the conduct of the donee of the power, who can make it vest in them absolutely in possession, or can defeat it altogether. * * * After a will or deed containing such a power has taken effect, and before the donee of the power has acted under it, have all the rights of succession in possession and enjoyment so vested that there is no possibility of a succession that will come into existence later? * * * The cases above cited, * * * show that the succession is not so vested in those who will take if the power is not exercised, that it may not go to the appointee through the exercise of the power of appointment. Until the time comes for the final determination, it is not established as belonging to anyone. * * *

We think it is in the power of the legislature to say, in reference to succession in possession after the death of the persons whose decease is awaited, that property so held is not vested in anybody, and that when it vests in possession through a proper disposition of it, which is dependent upon the will and conduct of the donee, a succession tax shall be imposed."

The contrary argument is, of course, that those who would take in the absence of the exercise of the power of appointment have interests which are vested subject to be divested by the exer-

cise of the power of appointment; and a very plausible argument can be made to sustain this view, especially in the light of the Ohio decisions declaring that the policy of the law is to favor the vesting of estates, which policy is, of course, violated in a sense by a holding that remainders subject to a power of appointment are not vested anywhere until the power is exercised or not.

Whatever may be the result should any question arise as to the application of this section to the exercise of the power created by an instrument taking effect prior to June 5, 1919, it is the opinion of this department that the statute clearly qualifies the right to create powers by instruments taking effect after that date; so that in the case to which the Commission refers, there can be no doubt that the proper determination be made by the Probate Court which is called upon to determine the tax in the estate of the donor, is to the effect that the remainder subject to powers is no part of the estate of the donor for inheritance tax purposes.

The principles above developed also dispose of the question as to the application of Section 5343 of the General Code. That section is copied from the New York law. It provides as follows:

"When, upon any succession, the rights, interests, or estates of the successors are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, a tax shall be imposed upon such successions at the highest rate which, on the happening of any contingencies or conditions, would be possible under the provisions of this subdivision of this chapter, and such taxes shall be due and payable forthwith out of the property passing, and the probate court shall enter a temporary order determining the amount of such taxes in accordance with this section; but on the happening of any contingency whereby the said property, or any part thereof, passes so that such ultimate succession would be exempt from taxation under the provisions of this subdivision of this chapter, or taxable at a rate less than that so imposed and paid, the successor shall be entitled to a refunder of the difference between the amount so paid and the amount payable on the ultimate succession under the provisions of this chapter, without interest; and the executor or trustee shall immediately upon the happening of such contingencies or conditions apply to the probate court of the proper county, upon a verified petition setting forth all the facts, and giving at least ten days' notice by mail to all interested parties, for an order modifying the temporary order of said probate court so as to provide for a final assessment and determination of the taxes in accordance with such

ultimate succession. Such refunder shall be made in the manner provided by Section 5339 of the General Code."

In New York, this section was construed as applicable only when the ultimate taxation to which it looks forward, and in security for which the temporary tax is exacted, is to take place, or may take place, in the estate of the person successions from whom are being taxed.

Matter of Howe, 83 N. Y. Supp. 825; 176 N. Y. 570;

Matter of Burgess, 204 N. Y. 265;

Matter of Clarke, 78 N. Y. Supp. 869.

But because of the decisions commented upon in the earlier portion of this opinion, it came to be held that the possibility that the power might not be exercised, or that the effect of its exercise might be waived by beneficiaries entitled to the estate covered by it in the absence of its exercise, was a contingency the happening of which might give rise to successions in the estate of the donor; so that this possibility should be taxed immediately at the highest possible rate. Matter of Burgess *supra*.

But in Ohio, the statute, assumed to be constitutional, makes the estate subject to a power always a succession in the estate of the donee and never a successor in that of the donor. That being the case, the authority of the earlier New York decisions is sufficient to support the conclusion that no tax under Section 5343 is to be assessed. The section commences with a condition implicit in the words "When, upon any succession," and this condition is not satisfied because there is no, "succession," in the estate under determination.

In a letter accompanying the formal request for opinion the Commission states that apprehension is felt in some quarters lest successions to which paragraph 4 of Section 5332 is applicable may escape inheritance taxation, especially where the donor and the donee of the power are both non-residents. This apprehension may be well founded on practical grounds. Legally, however, there should be no fear, as the question is to be determined when it arises in the estate of the donee of the power; and if at that time the property is located in Ohio, it will be taxable. *State v. Probate Court*, 124 Minn. 508; *In re Warden*, 157 N. Y. Supp. 1011; and *Walter v. Treasurer*, 221 Mass. 600.

Of course, where the property consists of intangibles and the donor was a resident of Ohio who created the power by will and vested it in a donee who is a non-resident of Ohio, the result

is that the succession does escape the Ohio inheritance tax; but conversely if the donor of the power with respects to similar property was a non-resident so that no Ohio Taxation could be predicated upon any succession in his estate but the donee is a resident and exercises the power of appointment, especially by will, it will become a succession taxable in Ohio. Moreover, questions of this sort are most likely to be met with respect to real estate, as to which there is not so much danger of practical evasion or avoidance.

SECRETARY OF STATE

NEW INCORPORATIONS

The Advance Clay Prod. & Mfg. Co., Cleveland, \$10,000. E. C. Reminger, Jay M. Glick, J. H. Belgrave, Albert Stebbins, R. L. Ammerman.

The Acorn Building Co., Columbus, \$5,000. John A. Trainor, Jr., C. L. MacEachen, Harvey C. Riley, Helen Mason, P. H. Houck.

The Irwin Shoe Co., Cleveland, \$10,000. J. R. Staver, P. F. Price, Rose A. Schwartz, J. Schwartz, Geo. F. Greve.

The Bonniewood Realty Co., Cleveland, \$10,000. Joseph Levine, A. A. Kalish, Max Kalish, Anna Miller, Arthur Kalish.

The 14th St. Cleveland Theatre Co., Cleveland, \$1,000. Ira J. Warner, Frank G. Mooney, I. L. Nichols, O. E. Shaw, H. Stewig.

The Sterling Jewelry Co., Dayton, \$500. Mose Cramer, Harry I. Cramer, Bertsyl W. Faris, James H. More, Frank R. Gusweiler.

The South Brooklyn Svgs. & Loan Co., Cleveland, \$100,000. J. Charles Eby, Thomas J. Clements, Aubrey A. Harbert, Victor Poteroz, M. Kern.

The Baldwin City Mills Co., Youngstown, \$30,000. A. W. Craver, J. V. Starrs, J. W. Craver, Wm. L. Sause, Richard T. Bird.

The Parched Wheat Co., Fostoria, \$50,000. E. W. Allen, Geo. E. Schroth, B. M. Solomon, M. A. Thomas, F. Harrison.

The Transhaw Auto Repair and Service Co., Cincinnati, \$10,000. Orville K. Jones, E. S. Morrissey, W. Donald Hall, Chester R. Shook, H. J. Welter.

The Speck Realty Co., Cleveland, \$50,000. William A. Speck, Herman J. Speck, Albert A. Speck, Alford J. Armbruster, Mabel Tucker.

The Ohio Trent Coal Coke and Amalgam Co., Cleveland, \$500. W. H. Jones, L. J. Davis, Victor J. Silliman, Ernest H. Huston, Ruth Hunter.

The Alcorn-Hahn Supply Co., Youngstown, \$50,000. Jos. L. Alcorn, Dale R. Hahn, Charles S. Brown, Armour J. McFarland, Sarah J. Alcorn.

The Crosstown Realty Co., Cleveland, \$5,000. Barnet Bookatz, Fred Bauer, E. Ginsburg, Archie Horwitz, Solomon Bloomfield.

The Library Savings & Loan Co., Cincinnati, \$500,000. F. H. Walter, Daniel Curtis, A. L. Hess, B. R. Hathaway, John C. Willey.

The Gordon and Clark Co., Newark, \$10,000. John J. Gordon, C. B. Clark, Joe M. Clark, Carl Gatterdam, Eugene G. Clark.

The Neuhaus and Bernard Co., Toledo, \$25,000. Edward Neuhaus, Charles Bernard, W. H. Wagers, L. P. Smith, Annetta Mohler.

The Peerless Columbus Co., Columbus, \$500. Cletus H. Smith, Charles Rogers, Maurice V. Kessler, S. F. MacConkey, Arthur S. Burket.

The L. S. Green Realty Co., Cleveland, \$500. L. S. Green, Marjorie D. Green, Chester B. Baker, Florence M. Johnson, F. B. Douglass.

The Lehner-Butts Hardware and Supply Co., Columbus, \$500. Lorenz Lehner, Albert E. Klarman, George A. Wright, Frank Butts, Homer Savage.

The Ieslie Grove Oil Co., Newark, \$50,000. Leslie Grove, Calvin C. Jeffries, H. L. Jenkins, Homer H. Sparks, L. Doris McCracken.

The Weger Marine Engine Co., Cleveland, \$500,000. T. H. Roberts, Sherod S. Noe, Fred W. Dutton, Lawrence L. Prasek, S. G. Fleisher.

The Super Building and Loan Ass'n., Dayton, \$50,000. C. J. Robinson, A. W. Asbury, Charles R. Taylor, James P. Boozer, Howard M. Mitchell, William Iles.

The A. R. Brueggeman Co., Cleveland, \$500. A. R. Brueggeman, Clark T. McConnell, Ralph W. Sanborn, Harry F. Pattie, M. Kubik.

The Hooker Tire & Supply Co., Cincinnati, \$1,000. Walter C. Taylor, James B. O'Donnell, John D. Ellis, R. C. Cronin, M. A. Wood.

The Lenner-Wood Mfg., Co., Arkon, \$500. R. W. Wood, N. D. Lenner, Deane Lenner, J. Fred Smith, Jean Lenner.

The Swiss Oil and Gas Co., Winchester, \$30,000. F. C. Leeds, W. E. Sexton, C. A. Shaw, C. W. Purcell, G. G. Swisshelm.

The Wel-Ever Chicago Sales Co., Toledo, \$25,000. Albert P. Fall, Ed. C. Wackle, E. H. Sedgwick, H. W. Henning, Clarence E. Welever.

The Ivanhoe Elkhorn Collieries Co., Portsmouth, \$50,000. B. F. Vincent, H. C. Scaldar, G. H. Williamson, F. A. Coburn, Joseph T. Michlethwait.

The California Fruit Stores Co., Elyria, \$5,000. A. H. West, Gertrude Kailes, Margaret I. Cordano, J. J. Hershey, Robena L. Bark.

The Main Savings and Loan Co., Cleveland, \$25,000. Edward J. Brean, Lloyd G. McKeith, E. S. Braeunig, L. P. Phillips, Richard J. Moriarty.

The Square Deal Furniture Store Co., Cleveland, \$10,000. Morris Forstein, Bernard J. Smolin, Saul Blinder, J. Goldman, Samuel J. Hay.

The Market Engineering and Development Co., Cincinnati, \$10,000. Edward P. Moulinier, R. L. Marshall, O. A. Smith, Graham P. Hunt.

The Central State Savings & Loan Co., Ashland, \$1,000,000. L. C. Washburn, E. C. Bloom, J. E. Jones, E. W. Saucier, Edward McCamic.

The Wm. McComb Co., Lima, \$15,000. Wm. McComb, Jr., Ralph C. Kemmer, John F. Jervis, Louis A. Gushman, Guy D. Means.

The Forkerson Supply Co., Mansfield, \$30,000. A. C. Forsyth, J. F. Overson, Fred W. Heineking, Thomas Kern.

The Akron Bonded Mortgage Co., Akron, \$50,000. Samuel J. Cole, John H. McGovern, L. R. Houston, G. O. Garman, L. H. Conger.

The Williams Building Co., Norwood, \$25,000. Charles H. Williams, Anna A. Williams, Frank A. Burns, Mike Schnetzer, Joseph F. Good.

The Gilbert Avenue Realty Co., Cincinnati, \$150,000. A. S. Herbert, J. H. Reeve, Geo. W. Walsh, Samuel Assur, John O'Leary.

The Steam Coal Mining Co., Cleveland, \$1,000. Chas. L. Brown, T. A. Williams, D. W. Brown, J. H. Van Derveer, J. B. Kruso.

The Mattman and Sinclair Co., Cincinnati, \$10,000. Gustave F. Mattman, Louis L. Sinclair, Lem S. Miller, Charles H. Elston, Jeanne B. Hadley.

The Rickenbacher-Wheat Co., Cincinnati, \$50,000. Robert H. Wheat, E. H. Matthews, F. C. Busching, E. R. Donohue, J. W. Matthews.

The Perfect Sales Co., Cleveland, \$10,000. D. H. Dillon, T. R. Thomas, V. Spirakus, Fred W. Orr, Seth Wood.

The Singleton Tire Sales Co., Cleve-

land, \$10,000. H. F. Singleton, W. F. Frye, George W. Cowell, George E. Stolpman, Paul S. Lietz.

The Broadway Laundry Co., Cleveland, \$50,000. W. M. Bruml, L. S. Levy, B. D. Zieve, C. I. Goldsmith, H. S. Goldsmith.

The Bennett Co., Nelsonville, \$50,000. C. E. Bennett, C. J. Bartles, J. V. Bennett, G. S. Bennett, R. S. Bartels.

The L. A. Fish Co., Bryan, \$25,000. L. A. Fish, G. J. Fish, I. E. Johnson, A. L. Gibbard, G. T. Umstead.

The Warren Creamery Co., Warren, \$20,000. Israel Knell, Morris Cornfield, Yale Knell, Esther Cornfield, H. A. Nelson.

The Balba Co., Toledo, \$100,000. U. G. Denman, Wilton C. Boesel, Herman R. Miller, C. J. Applegate, Justice Wilson.

The Bratenahl Co., Cleveland, \$500. L. D. Zinke, F. L. Ludwick, H. J. Mills, E. K. Curtiss, J. Paul Thompson.

The Lake Shore Savings and Loan Co., Cleveland, \$1,000,000. Wade McConnell, E. Horvath, J. W. Ramsey, M. L. Dilley, E. S. Couzens.

The Lexington Savings & Loan Co., Cleveland, \$500,000. L. K. Rawson, F. M. Pritts, C. M. Knight, W. J. Parker, E. S. Roberts.

The Ohio Mill Work Co., Cleveland, \$10,000. M. Finesilver, M. Finesilver, B. D. Glick, E. M. Ackerman, H. J. Tabor.

The Cypress Bldg. Co., Lynhurst, \$10,000. Wm. Langer, N. G. Wright, E. A. Hughes, P. M. Douglas, Geo. Guptill.

The Garden-Craft Mfg., Medina, \$100,000. C. T. Sorenson, Joseph Hosack, H. C. Bates, S. E. Johnson, H. C. Keck.

Increases

The J. T. Tractor Co., Cleveland, from \$20,000 to \$23,000.

The Enos Coal Mining Co., Cleveland, from \$5,000 shares no par to 10,000 shares.

The Rockport Lumber Co., Cleveland, from \$10,000 to \$75,000.

The McCann-Free Co., Cleveland, from \$10,000 to \$25,000.

The Builders Structural Steel Co., Cleveland, from \$108,000 to \$122,000.

Decreases

The Ohio Paper Box Co., Cincinnati, from \$56,000 to \$28,000.

PUBLIC UTILITIES COMMISSION

**No. 2537—The Consumers of Heat in the City of Coshocton, Ohio,
Complainant, vs. The Ohio Service Company, of Coshocton, Ohio,
Defendant. Prayer Granted.**

(Dated July 19, 1922.)

This day, after full hearing, (due notice of the time and place of which was given by publication, and otherwise, as provided by law), this matter came on for final consideration upon the pleadings, the evidence and exhibits, and the argument of counsel.

The Commission, being fully advised in the premises, and having made an independent examination of the defendant's property and books, and having under specific consideration the cross-petition of the defendant, wherein the consent and authority of this Commission is asked for the abandonment of its property used in the furnishing of heating service in the city of Coshocton, Ohio, finds:

That said facilities have been in operation for more than five years;

That, for the seven years, 1917 to 1929 (for which last year the operating expenses and taxes are estimated at the sum of \$31,000.00 and the gross revenues at the sum of \$20,-480.00) inclusive, the operating expenses and taxes allocable to the defendant's heating service amount to the sum of \$215,-222.00, and, for the same period, the gross revenues from such service amount to the sum of \$159,785.00, or an average deficit for each of said seven years of \$7,920.00, and

That, having due regard for the welfare of the public, and for the purpose of preserving the defendant's electrical service for the convenience of its consumers and the public, the proposed discontinuance of said heating service in the city of Coshocton, Ohio, and the abandonment of the facilities used in connection therewith, is reasonable,

and is satisfied that consent and authority therefor should be granted. It is, therefore,

Ordered, That The Ohio Service Company be, and hereby it is authorized to discontinue the furnishing of heating service to its consumers and the public in the city of Coshocton, Ohio, and to permanently abandon the facilities used in such service. It is further

Ordered, That the complaint herein be, and hereby the same is dismissed.

No. 2593—In the Matter of the Application of The Toledo Terminal Railroad Company to Issue Its Bonds Secured by Mortgage and Deed of Trust in the Sum of \$321,000, for the Purpose of Reimbursement of Money Expended from Income. Prayer Granted.

(Dated July 20, 1922.)

This day, it appearing to the Commission from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, this matter came on for consideration upon the application of The Toledo Terminal Railroad Company, (a corporation duly organized and existing under and by virtue of the laws of the State of Ohio), asking the consent and authority of the Commission to issue and distribute, in consideration of the cancellation of certain of applicant's demand notes issued in evidence of its indebtedness because of certain non-capital expenditures and on a five per cent interest basis, to its nine proprietary companies, first mortgage, four and one-half per cent bonds, maturing November first, 1957, of the principal sum of \$321,000 for and on account of the expenditure, for capital purposes, of the sum of \$328,469.51, (none of which was obtained by the issue of stock, bonds, notes or other evidences of indebtedness) from its treasury within the five years next preceding the date of the filing of the application herein and to the first day of January, 1922.

The Commission, being fully advised in the premises, finds from the pleadings and exhibits filed herein, including the finding and order, in its proceeding, Finance Docket No. 2413, dated July eighth, 1922, by the Interstate Commerce Commission, consenting to and authorizing the issue and disposition of said bonds on said account:

That, in the five years next preceding the date of the filing of the application herein and to the first day of January, 1922, the applicant actually expended from its treasury for the acquisition of property and the construction, completion, extension and improvement of its facilities, the sum of \$328,468.51, none of which was obtained by the issue of stocks, bonds, notes or other evidences of indebtedness, and the capitalization of which has not heretofore been authorized by this Commission;

That the issue of applicant's first mortgage bonds of the principal sum of \$321,000.00 is reasonably required and necessary for the reimbursement of applicant's treasury for and on account of the aforesaid uncanceled, capital expenditures therefrom;

That the applicant is now indebted to its nine proprietary companies to the extent of the sum of \$294,613.80 (evidenced by demand notes issued under authority of an order of the Interstate Commerce Commission) which has been expended for non-capital purposes, which indebtedness, however, must be discharged, and, under the conditions now existing in the financial markets, a reasonable return from the sale of said \$321,000.00, principal sum, of first mortgage bonds, will be the acceptance, at a price of 91.78 percentum of the principal amount thereof, of said bonds by said proprietary companies in discharge of said indebtedness, and,

That, the applicant now having capital stock issued and outstanding in excess of its issued and outstanding bonds, the issue and disposition of said \$321,000.00, principal sum, of first mortgage bonds in excess of its issued and outstanding capital stock should be specifically consented to, authorized and approved,

and is satisfied that consent and authority for the issue and disposition of said first mortgage bonds should be granted. It is, therefore,

Ordered, That said The Toledo Terminal Railroad Company be, and hereby it is authorized to issue its first mortgage, four and one-half per cent bonds, maturing November first, 1957, of the principal sum of three hundred and twenty-one thousand dollars (\$321,000). It is further

Ordered, That said bonds be, by the applicant, issued and delivered, pro-rata in the ratio of their respective holdings of applicant's capital stock, to the applicant's nine proprietary companies, at a price of ninety-one and seventy-eight one hundredths percentum of the principal sum thereof, in discharge of applicant's indebtedness, represented by demand notes, issued under authority of an order of the Interstate Commerce Commission, of the principal amount of \$294,613.80, for non-capital purposes. It is further

Ordered, That the discount at which such bonds are so issued be amortized pursuant to the rules and regulations heretofore prescribed by this Commission. It is further

Ordered, That such demand notes, when delivered to the applicant, forthwith be cancelled and destroyed. It is further

Ordered, That said bonds be, by the applicant, so issued and disposed of for and on account of the reimbursement of its treasury for \$321,000 of the sum of \$328,468.51, none of which was obtained or procured by the issue of stock, bonds, notes or other evidences of indebtedness, actually expended from its treasury, within the five years next preceding the date of the filing of the applica-

tion herein and to the first day of January, 1922, for the acquisition of property and the construction, completion, extension and improvement of its facilities, none of which have heretofore been capitalized or authorized to be capitalized by order of this Commission. It is further

Ordered, That the applicant make verified report to this Commission of the issue and disposition of said first mortgage bonds and the cancellation and destruction of said demand notes, pursuant to the terms and conditions of this order.

✽

No. 2506—In the Matter of the Application of The Hilliard Light and Power Company for Consent and Authority to Issue and Dispose of \$25,000 Common Capital Stock. Prayer Granted.

(Dated June 30, 1922.)

This day, it appearing to the Commission from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence on file, that the taking of oral testimony herein is unnecessary, this matter came on for consideration upon the application of The Hilliard Light and Power Company, (a corporation duly organized and existing under and by virtue of the laws of the State of Ohio), asking the consent and authority of this Commission to issue and dispose of common capital stock of the par value of \$25,000, the proceeds arising from the sale thereof to be used to reimburse its treasury for money (not procured by the issue of stock, bonds, notes or other evidences of indebtedness) expended therefrom, to the first day of January, 1922, for the construction of additions and improvements to its distribution plant and a transmission line from Hilliards to the Columbus, Ohio, Storage Dam, and to pay for the cost of building and equipping a transmission line from the Columbus, Ohio, Storage Dam to the Village of Dublin, Ohio.

The Commission, being fully advised in the premises, finds from the pleadings and exhibits filed herein and its independent inquiry and investigation thereupon:

That, within the five years next preceding the date of the filing of the application herein and to the first day of January, 1922 the applicant actually expended from its treasury for the construction of additions and improvements to its distribution system and a high tension transmission line from the Columbus, Ohio, Storage Dam (where electrical energy is procured from The Columbus Railway, Power and Light Company), the sum of \$13,700.00, none of which was obtained by

the issue of stock, bonds, notes or other evidences of indebtedness within the meaning of Sec. 614-53, G. C. of Ohio;

That the applicant has under contract the construction and equipment of a transmission line from the said Columbus, Ohio, Storage Dam to the Village of Dublin, Ohio, the cost of which is to be the sum of \$8,000.00, and

That the issue of applicant's common capital stock of the par value of \$21,700.00 is reasonably required and the money to be procured thereby, necessary for the reimbursement of its treasury for the aforesaid uncanceled expenditures therefrom, and for the construction, completion, extension and improvement of its facilities as aforesaid,

and is satisfied that, in so far as the same asks consent and authority to issue and dispose of common capital stock of the par value of \$21,700, the application herein should be granted. It is, therefore,

Ordered, That said The Hilliard Light and Power Company be, and hereby it is authorized to issue its common capital stock of the par value of twenty-one thousand, seven hundred dollars (\$21,700), and that said capital stock be sold for the highest price obtainable but not less than the par value thereof. It is further

Ordered, That the proceeds arising from the sale of said common capital stock be, by the applicant, devoted to and used for the following purposes, and no others, to wit:

For the reimbursement of its treasury for the moneys, not procured by the issue of stock, bonds, notes or other evidences actually expended therefrom within the five years next preceding the date of the filing of the application herein and to the first day of January, 1922, for the construction of additions and improvements to its distribution system and a transmission line from the Columbus, Ohio, Storage Dam to the Village of Hilliards, Ohio, \$13,700.00.

For the construction of a transmission line from the Columbus, Ohio, Storage Dam to the Village of Dublin, Ohio, \$8,000.00.

It is further

Ordered, That the applicant make verified report to this Commission, semi-annually, within fifteen days after the close of each calendar, semi-annual period, of the issue and disposition of said capital stock and, in reasonable detail, of the expenditure of the proceeds thereof pursuant to the terms and conditions of this order. It is further

Ordered, That said application, in so far as it asks consent and authority to issue common capital stock of the additional par value of three thousand, three hundred dollars (\$3,300) be, and hereby the same is denied.

**No. 2579—In the Matter of the Application of The City Water Company, of Bowling Green, Ohio, for Authority to Issue Bonds.
—Prayer Granted.**

(Dated July 20, 1922.)

This day, it appearing to the Commission from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, this matter came on for consideration upon the application of The City Water Company of Bowling Green, Ohio, (a corporation duly organized and existing under and by virtue of the laws of the state of Ohio), asking the consent and authority of the Commission to issue its first mortgage, ten-year, six per cent. bonds, dated September first, 1922, of the principal sum of \$150,000.00, the proceeds arising from the sale thereof to be used to discharge applicant's present outstanding bonded indebtedness and a floating indebtedness, and to provide certain additions, extensions and improvements to its plant and facilities.

The Commission, being fully advised in the premises, finds from the pleadings and exhibits filed herein and its independent inquiry and investigation thereupon:

That the applicant now has outstanding \$120,500.00, principal sum, of mortgage bonds which mature upon the first day of September, 1922, and must, on or before said day, be paid and discharged or lawfully refunded;

That the applicant, as of June first, 1922, was indebted, in the sum of \$5,000.00 for and on account of the provision of certain additions, extensions and improvements to its facilities;

That, within the five years next preceding the date of the filing of the application herein and to the first day of June, 1922, the applicant actually expended from its treasury for the construction of certain additions, extensions and improvements to its plant and facilities, not heretofore capitalized or authorized to be capitalized by order of this Commission, the sum of \$23,500.00, none of which was obtained by the issue of stock, bonds, notes or other evidences of indebtedness;

That the issue of applicant's said new First Mortgage Bonds of the principal sum of \$149,000.00 is reasonably required, and the money to be procured thereby, necessary for the payment and discharge of its indebtedness and the reimbursement of its treasury for and on account of uncapitalized expenditures therefrom as aforesaid, and

That, the applicant now having capital stock issued and outstanding of the par value of \$100,000.00, the issue and dis-

position of \$49,000.00, principal sum, of said bonds in excess of its issued and outstanding capital stock, and the expenditure of the proceeds thereof as such excess, should be specifically consented to, authorized and approved,

and is satisfied that consent and authority for the issue and disposition of applicant's said new first mortgage bonds of the principal sum of \$149,000.00 should be granted. It is, therefore,

Ordered, That said The City Water Company (of Bowling Green, Ohio), be, and hereby it is authorized to issue its new first mortgage, ten-year, six per cent. bonds, maturing September 1st, 1932, of the principal sum of one hundred and and forty-nine thousand dollars (\$149,000.00), and that said bonds be sold for the highest price obtainable but not less than the principal sum thereof. It is further.

Ordered, That the issue of forty-nine thousand dollars, principal sum, of said bonds in excess of applicant's issued and outstanding capital stock, and the expenditure, as hereinafter provided, of the proceeds thereof as such excess, be, and hereby they are specifically consented to, authorized and approved. It is further

Ordered, That the proceeds arising from the sale of said new first mortgage bonds be, by the applicant, devoted to and used for the following purposes, and no others, to-wit:

For the payment and discharge of the applicant's present outstanding First Mortgage Bonds which mature upon the first day of September, 1922, \$120,500.00.

For the payment and discharge of applicant's floating indebtedness, as of June first, 1922, for and on account of the provision of certain additions, extensions and improvements to its plant and facilities, \$5,000.00.

For the reimbursement of its treasury for moneys, not procured by the issue of stock, bonds, notes or other evidences of indebtedness, actually expended therefrom within the five years next preceding the date of the filing of the application herein and to the first day of June, 1922, for the construction of additions, extensions and improvements to its plant and facilities, not heretofore capitalized or authorized to be capitalized by order of this Commission, \$23,500.00.

It is further

Ordered, That, forthwith upon its acquisition of any of said bonds maturing upon the first day of September, 1922, the applicant render the same non-negotiable and, upon its acquisition of all of said bonds, cancel and destroy the same. It is further

Ordered, That the applicant make verified report to this Commission of the issue and disposition of its said new first mortgage bonds, the expenditure of the proceeds thereof, and the cancellation and destruction of its maturing first mortgage bonds, pursuant to the terms and conditions of this order.

And it appearing that the applicant, at this time, has no definite program for the further expansion and improvement of its plant and facilities, it is further

Ordered, That said application, in so far as it asks consent and authority to issue and dispose of its said new first mortgage bonds of the additional principal sum of one thousand dollars, be, and hereby the same is denied.

*

No. 2572—In the Matter of the Application of The Valley Telephone Company for Authority to Issue \$50,000.00 Par Value of Its Seven Per Cent. Notes—Prayer Granted.

(Dated July 17, 1922.)

This day, it appearing to the Commission from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, this matter came on for consideration upon the application of The Valley Telephone Company (a corporation duly organized and existing under and by virtue of the laws of the State of Ohio), asking the consent and authority of this Commission to issue \$50,000.00, principal sum of ten-year, seven per cent. first mortgage notes, dated September first, 1922, \$45,500.00 principal sum, thereof to be exchanged for a like amount of the applicant's outstanding twenty-year, five per cent. first mortgage notes which mature upon the first day of September, 1922, and the balance of such notes to be held in the treasury for some, at present, undetermined purpose.

The Commission, being fully advised in the premises, finds from the pleadings and exhibits filed herein and its independent inquiry and investigation thereupon:

That the applicant now has outstanding \$45,500.00, principal amount, of twenty-year, five per cent. first mortgage notes, which mature upon the first day of September, 1922, and must, on or before said date be paid and discharged or lawfully refunded, and

That the issue and disposition of applicant's said first mortgage, ten year, seven per cent. notes of the principal

sum of \$45,500.00 is reasonably required and necessary for the payment and discharge or lawful refunding of applicant's indebtedness as aforesaid,

and is satisfied that consent and authority for the issue and disposition of applicant's said notes of the principal sum of \$45,500.00 should be granted. It is, therefore,

Ordered, That said The Valley Telephone Company be, and hereby it is authorized to issue its first mortgage, ten-year, seven per cent. promissory notes, dated September first, 1922, of the principal sum of forty-five thousand, five hundred dollars (\$45,500.00). It is further

Ordered, That said notes be issued and delivered in exchange for applicant's present outstanding first mortgage, twenty-year, five per cent. promissory notes, dated September first, 1902, of the principal sum of \$45,500.00, and for no other purpose whatsoever. It is further

Ordered, That, forthwith upon the acquisition of any of said present outstanding promissory notes, the applicant render the same non-negotiable and, upon the acquisition of the whole of said outstanding issue, cancel and destroy the same. It is further

Ordered, That, on or before the first day of October, 1922, the applicant make verified report to this Commission of the issue and disposition of its said ten-year notes and the cancellation and destruction of said twenty-year notes pursuant to the terms and conditions of this order. It is further

Ordered, That said application, in so far as it asks consent and authority to issue and dispose of such ten-year notes of the additional principal sum of four thousand, five hundred dollars (\$4,500.00) be, and hereby the same is denied.

✽

No. 2484—In the Matter of the Application of The Ohio Public Service Company for Permission to Purchase The Richland Public Service Company and The Ashland Gas and Electric Light Company, and to Issue its Securities Therefore.—Supplemental and Final Order.

(Dated July 18, 1922.)

The Commission having heretofore, to-wit: Upon the fourteenth day of February, 1922, by preliminary order, duly made and entered herein, found that, for purchase and sale purposes, the

value of the property of The Richland Public Service Company and The Ashland Gas and Electric Light Company, was not less than the sum of \$6,978,500.00; authorized the issue and disposition of certain capital securities to provide the partial consideration therefore, (such consideration to become full and final in the event of the failure of the applicant thereafter to show to the Commission greater value as a basis for increasing said consideration), and continued this matter for the receipt and consideration of further proof as to the value of the aforesaid properties, the purchase and acquisition of which, by the applicant, was duly consented to and authorized by an order made and entered in proceeding No. 2483:

This day, after full hearing, said matter again came on for consideration upon the pleadings and exhibits filed herein, the record made upon said hearing, and after an independent examination, by the Commission, of said company's property and books.

The Commission, being fully advised in the premises, finds:

That, for purchase and sale purposes, the value of the properties of said The Richland Public Service Company and The Ashland Gas and Electric Light Company, is not less than the sum of \$7,275,900.00;

That, in addition to the capital securities heretofore herein authorized to be issued for and on account of the acquisition of the aforesaid property, the issue of applicant's common capital stock of the par value of \$297,400.00 is reasonably required, and the disposition thereof, necessary for and on account of the acquisition of said property, aforesaid, and,

is satisfied that consent and authority for the issue and disposition of said additional common capital stock should be granted. It is, therefore

Ordered, That, in addition to the capital securities heretofore authorized herein to be issued, said The Ohio Public Service Company be, and hereby it is further authorized to issue its common capital stock of the par value of two hundred and ninety-seven thousand, four hundred (\$297,400.00) dollars, and that said common capital stock be issued as fully paid and at par. It is further

Ordered, That said additional common capital stock be delivered, as fully paid and at par, as the final installment of the full consideration for all of the property, rights and other assets of The Richland Public Service Company and The Ashland Gas and Electric Light Company, and for no other purpose whatsoever. It is further

Ordered, That the applicant make verified report to this Commission of the issue and disposition of said additional common capital stock pursuant to the terms and conditions of this order. It is further

Ordered, That the finding hereinbefore set forth as to the value of said property and the authorization of the capitalization of the consideration to be passed therefore, shall not be binding upon this Commission in any future proceeding involving rates and/or service. It is further

Ordered, That the application herein, in so far as the same asks the consent and authority to issue and dispose of \$500,000.00, par value, of applicant's preferred capital stock and \$911,600.00, additional par value of common capital stock, be, and hereby the same is denied.

✽

Advanced Utility Rate Proceeding No. 92—In the Matter of the Proposed Increased Rates and Charges of The Shelby Water Company for Water Service, Filed to Become Effective July 15, 1922.

(Dated July 14, 1922.)

The Shelby Water Company having, on the fifteenth day of June, 1922, filed with this Commission its schedule designated: P. U. C. O. No. 2 providing certain increased rates and charges for water service furnished in the City of Shelby, Ohio, to become effective July 15, 1922.

And, the City of Shelby, Ohio, by its Director of Law, William D. Hood, having this day filed complaint against said proposed rates and charges alleging among other things that said rates and charges are excessive, unjust, unreasonable and in violation of law and the commission finding that the increased rates and charges provided in said schedule P. U. C. O. No. 2 are inconsistent with the rates and charges fixed by an ordinance passed by the Council of the City of Shelby, Ohio, under date of June 26, 1922, copy of which ordinance is in the files of this Commission, it is

Ordered, that said schedule P. U. C. O. No. 2 proffered by The Shelby Water Company providing increased rates and charges for water service furnished in said city of Shelby, Ohio, to become effective July 15, 1922, be, and hereby it is rejected.

ATTORNEY GENERAL

Where an Alleged Error in a Return for Taxation Consists of a Mere Over Valuation of Property no Correction Can be Made by the Auditor Whether the Over Valuation was Due to a Desire on the Part of the Officers of a Failing Company to Bolster up its Creditor or not. When the Auditor Places a Valuation Upon the Property Returned to Him, Acting Under Section 5406, General Code, He Has Exercised His Judgment. If Any Relief After the Exercise of His Judgment is to be Obtained, it Must be From the Board of Revision. If, However, There Has Simply Been an Error in Making Out the Return and This Error is of a Clerical Character, and Especially Where Property Has Been Returned Which is Really Non-Existent, it May be That on the Authority of Lewis vs. State 59 O. S. 37, the Auditor May Act. It is Not Thought That a Court Would Act to Correct Such Returns Unless All Administrative Remedies Had Been Exhausted and That the Taxpayer Cannot Complain in a Court of an Excessive Valuation Without first Attempting to Secure Relief From the Board of Revision.

No. 3375—(Opinion Dated July 21, 1922.)

Hon. John R. King, Prosecuting Attorney, Columbus, Ohio.

Dear Sir: You have requested the opinion of this department on the following question:

"The M. Company, a manufacturing concern for the year 1921 returned for taxation property valued at \$206,210. Although this return was under the oath of the officers of said company, it was apparently excessive and prior to the last day for the payment of taxes for the first half of the year 1921, a receiver was appointed for the company, who thereupon filed a written verified application with the county auditor asking for a reduction in the amount for which the company was assessed for taxation. All the property so returned was personal and consisted of raw materials on hand, together with tools, machinery, etc. On April 24, 1922, the county auditor reduced said valuation to \$155,920.

The C. Company, a manufacturing concern, filed a return, supported by the affidavit of its officers, showing raw materials, tools, furniture, etc. on hand of a valuation of \$66,710. The county auditor later increased this return to \$136,120. Receivers were appointed for the company who prior to the last day for the payment of taxes for the first half of the

year 1921, filed an application for correction, and the auditor thereafter reduced said valuation to \$87,050.

The question presented in each case is the authority of the auditor to reduce such valuations."

Attached to your letter is a memorandum in behalf of the county auditor. You refer to Opinion No. 2378 for the Year 1921, which is found in Vol. 1, Opinions of the Attorney General for this year, page 787.

This opinion construed Sections 2586, 2588-1 and 2589 of the General Code, and applies fully to both of the cases submitted by you. The auditor claims authority under these sections, and also under Section 5406 of the General Code.

The former opinion is adhered to; but in passing, it may not be inappropriate to elaborate slightly upon the reasoning on which that opinion was founded, and to consider 5406 of the General Code.

First, Section 5406 may be quoted. It provides as follows:

"The auditor, on or before the first Monday of May, annually, shall furnish the president, secretary, principal accounting officer, or agent as provided in the next two preceding sections, the necessary blanks for the purpose of making such returns, but neglect or failure on the part of the county auditor to furnish such blanks shall not excuse such president, secretary, accountant, or agent, from making the returns within the time specified herein. If the county auditor to whom returns are made is of the opinion that false or incorrect valuations have been made that the property of the corporation or association has not been listed at its full value, or that it has not been listed in the location where it properly belongs, or if no return has been made to the county auditor, he must have the property valued and assessed. This section and the next preceding section shall not tax any stock or interest held by the state in a joint stock company."

Undoubtedly the auditor has authority under this section either to increase or reduce the amount shown by the return of the proper officers of the corporation. This is because the auditor is acting in this instance as an original assessing officer. The return of the corporation does not constitute the assessment, which is incomplete until the auditor has acted and has placed his valuation upon the property exhibited in the return.

But in the cases submitted by you this original assessment has been made. Such assessment in each instance has been entered on the duplicate. At this point in the machinery of the assessment the power of the auditor under Section 5406 is *functus officio*. He has no revisory power; if any change is to be made in the assess-

ment an appeal must be made to the board of revision under Section 5609 of the General Code. That section provides as follows:

"Complaint against any valuation or assessment as the same appears upon the tax duplicate for the then current year, may be filed on or before the time limited for payment of taxes for the first half year. Any taxpayer may file such complaint as to the valuation or assessment of his own or another's property, and the county commissioners, the prosecuting attorney, county treasurer, or any board of township trustees, any board of education, mayor or council of any municipal corporation, in the county shall have the right to file such complaint. The county auditor shall lay before the county board of revision all complaints filed with him. The determination of any such complaint shall relate back to the date the lien for taxes for the current year attached, or as of which liability for such year was determined, and liability for taxes, and for any penalty for non-payment thereof within the time required by law, shall be based upon the valuation or assessment as finally determined. Each complaint shall state the amount of over-valuation, under-valuation, or illegal valuation, complained of; and the treasurer may accept any amount tendered as taxes upon property concerning which a complain is then pending, and if such tender is not accepted no penalty shall be assessed because however, shall be without prejudice to the claim for taxes upon of the non-payment thereof. The acceptance of such tender, the balance of the valuation or assessment. A like tender may be made, with like effect, in case of the pendency of any proceeding in court based upon an illegal excessive or illegal valuation."

In both these cases the desire of the applicant was to have the valuation or assessment as it appeared on the duplicate changed.

The power of the auditor himself to change an assessment on the duplicate is that which he possesses under Sections 2588, 2588-1 and 2589 of the General Code. These were the sections considered in the former opinion. It is not necessary to repeat their quotation. It has been repeatedly held by the Supreme Court of this state that this power is limited to the correction of clerical errors as distinguished from fundamental errors.

State v. Commissioners, 31 O. S. 271;

State v. Raine, 47 O. S. 447;

Insurance Co. v. Capeller, 38 O. S. 560;

Lewis v. State, 59 O. S. 37.

To be sure, it has been also held that an error may be "clerical" though it does not appear on the face of the tax list and duplicate itself. Thus, in Insurance Co. v. Capeller, *supra*, the error—an error of law in deducting certain items from "credits" appeared

on the face of the return made by the corporation. As said by McIlvaine, J. at page 574:

"No fact is to be inquired into. Every necessary fact appears on the face of the return."

Again in *Lewis v. State*, supra, the error clearly appeared on the face of the returns of the annual assessors with respect to new buildings. The courts have, however, never gone further than to hold that the power of the auditor under these sections extends to the correction of any error in the valuation of property which can be shown by inspection of official documents on file in his office. True, it was said in *Lewis v. State*, Supra, that:

"It is true that some of the facts necessary in this case to show the error must be ascertained from other sources. This objection, however, we do not regard as conclusive. * * ." The statute itself does not require the correction to be made founded on facts of record in the auditor's office, * * * and we perceive no sufficient reason for restricting their operation in such cases by a construction that would deny relief except on record evidence."

However, in the case in which these remarks are found, the only fact dehours the record which was considered by the court was the fact that no new building had been erected on a certain lot after the year 1890. The official papers themselves clearly showed that if that was the case there had been a duplication and a mistake, in that the property had been twice assessed on account of one new building, the building having been listed by the decennial, or real estate appraiser, and by the annual, or real estate assessor. This is but a slight deviation from the principal suggested in this opinion, and it is not believed that the case can be used to justify action in the instances mentioned in your request for opinion.

Perhaps the best discussion of the distinction between a clerical and a fundamental error is found in *State ex rel. v. Raine*, supra, in which Judge Bradbury used the following language:

"Errors by which property escapes its lawful share of taxation must of necessity be either fundamental, and thus beyond the power of a county auditor to correct, or clerical merely, and therefore within that power. The difficulty, however, lies in the attempt to distinguish them. While we are not required in this case to lay down rules, if that were possible, by which, in all cases, the character of these errors—as being fundamental or merely clerical—may be determined, yet, certainly, those only are to be deemed fundamental that pertain to the very foundation upon which a tax rests; this of course includes

defects and imperfections in the law itself, and errors of judgment committed by public boards acting within the scope of their authority. But can an error be said to be fundamental and thereby placed beyond the power of a county auditor to correct, where it has been committed by a board of equalization, or by any other board or officer while acting without authority of law, or in excess thereof? We think not; and if, when we come to examine the acts of the boards of equalization which are under consideration in this action, it shall appear that they acted without warrant of law or exceeded their authority, their errors, so committed, are not in any proper sense of the term fundamental, and may therefore be corrected by the county auditor.

The following statement is made in the memorandum submitted by the auditor:

"Without reference to the cases under consideration, it has been found in a number of cases, that officers of a company, feeling themselves insecure financially, have sought to bolster their credit by placing a fictitious value upon their assets. Other instances have occurred where property has been improperly valued by ignorance of the person making the return, or property has been returned which was really non-existent. In other cases there has simply been an error in making out the return."

Apparently the specific cases submitted by you come within the first class. It occurs to this department that certain distinctions may be drawn in the light of the cases. In the opinion of this department, where the alleged "error" consists of a mere over-valuation of property no correction can be made by the auditor whether the over-valuation was due to a desire on the part of the officers of a failing company to bolster up its credit or not. This is true because valuation is a matter of judgment. When the auditor places a valuation upon property returned to him, acting as has previously been observed, under Section 5406 of the General Code, he has exercised his judgment. If any relief after his exercise of judgment is to be obtained, it must be from the board of revision. If, however, there has simply been an error in making out the return and this error is of a clerical character, and especially where property has been returned which is really non-existent, it may be that on the authority of *Lewis v. State*, supra, the auditor may act.

It is also suggested in the memorandum prepared for the auditor that a court would surely direct a correction of such an error if appealed to, so that the auditor could be said to have

the right to do what a court would order him to do. This department, however, is of opinion that a court would not so act unless all administrative remedies had been exhausted, and that the taxpayer cannot complain in a court of an excessive valuation without first attempting to secure relief from the board of revision.

This statement also disposes of the contention made by the auditor to the effect that grave injustice will be perpetrated unless the auditor acts. A statement of the same character is found in the case of *Lewis v. State*. Whether this statement was true with respect to real estate at the time *Lewis v. State* was decided, it is certainly not true now; for a clear and complete remedy is given to the aggrieved taxpayer—in this instance, the receiver of the corporation acting in the interest of the creditors and stockholders—by an appeal to the board of revision under Section 5609. This remedy is both expeditious and adequate, and no injustice will result from denying the power of the auditor to act.



The Proof of Publication by Affidavit Called for by Section 4228, General Code, Should be Filed After the Publication of Each Ordinance, etc., is Completed, and it is not Permissible to File an Affidavit Prior to Publication to Cover a Prospective Publication.

No. 3378—(Opinion Dated July 21, 1922.)

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

Gentlemen: Your letter of recent date submitting a question under Section 4228 G. C. was duly received, and, omitting formal parts, reads as follows:

“Section 4228 G. C., regulating the publication of ordinances, resolutions, etc., in municipalities provides in part that:

‘Proof of the place of printing and required circulation of any newspaper used as a medium of publication hereunder shall be made by affidavit of the proprietor of either of such newspapers, and shall be filed with the clerk of council.’

This bureau has always contended that such affidavit must be filed in support of each ordinance, resolution, notice, etc., published in such newspapers.

Question: When a contract has been entered into between the publisher of a newspaper and the proper officers of a city for the publication required by law, would one affidavit as proof of the place of printing and required circulation filed at the time of entering into a contract be sufficient compliance with section 4228 of the General Code?”

Section 4228 G. C., so far as pertinent to your inquiry, reads as follows:

"Unless otherwise specifically directed by statute, all municipal ordinances, resolutions, statements, orders, proclamations, notices and reports, required by law or ordinance to be published shall be published as follows: * * * Proof of the place of printing and required circulation of any newspaper used as a medium of publication hereunder shall be made by affidavit of the proprietor of either of such newspapers, and shall be filed with the clerk of council."

It is the opinion of this department that Section 4228 G. C. can admit of no other reasonable construction than that publication of the particular ordinance, etc., must precede the filing of the affidavit of the newspaper proprietor, and also that an affidavit must be filed in support of each particular ordinance, etc.

The views above expressed also find support in the provisions of Sections 4231 G. C., which provides that immediately after the expiration of the period of publication, the clerk shall enter on the record of ordinances, in a blank to be left for such purpose, under the recorded ordinance, a certificate stating in which newspapers and on what dates publication was made, etc. Reference might also be made to Section 6251 G. C. in support of the conclusions reached. That section is the one which prescribes the charges that may be made by newspapers for the publication of municipal advertisement, etc., and, among other things, makes special provision with respect to newspapers having a circulation of over twenty-five thousand. In Opinion 2085, addressed to your department on May 18, 1921, it was held that the word "circulation", as used in section 6251 G. C., refers to and means the bona fide circulation of the particular issue or issues of the newspaper in which the advertisement is published.

In the course of the opinion it was said:

"It would seem, therefore, that the amount a newspaper is entitled to charge and receive under Section 6251 G. C. for a particular advertisement, whether it be one requiring one or more insertions, will depend upon the bona fide circulation of the issue of the newspaper in which each insertion is published."

You are therefore advised that the proof of publication by affidavit called for by Section 4228 G. C. should be filed after the publication of each ordinance, etc., is completed, and also that it is not permissible to file an affidavit prior to publication to cover a prospective publication.

Certificates of Indebtedness or Notes Can Lawfully be Issued by a Municipality for Sinking Fund Purposes Under Section 3913, General Code, and Subject to the Restrictions Thereof. The Proceeds of the Loan When Realized Will Become a Part of the Sinking Fund to be Administered as Sinking Fund Money Without Further Action on the Part of Council... The Proceeds of the Sinking Fund Levy to the Extent so Anticipated Will be Automatically Appropriated to the Payment of the Loan With Interest and Would not Constitute General Sinking Fund Revenues.

No. 3275—(Opinion Dated June 27, 1922.)

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

Gentlemen: The Bureau requests the advice of this department as follows:

"In opinion No. 1141 of 1918, Volume 1, page 546, concurred in by letter of July 16, 1920, it was held that:

'A municipal corporation may not borrow money under Section 3913 G. C. in anticipation of sinking fund levies nor for the purpose of meeting a deficiency in the sinking fund.'

Section 3913 G. C. at the time this opinion was rendered provided in part that:

'In anticipation of the general revenue fund in any fiscal year, such corporation may borrow money and issue certificates of indebtedness therefor, etc.'

The opinion cited above construes the phrase 'In anticipation of general revenue fund' as not including the sinking fund since such sinking fund is not a part of such general revenue fund.

Said Section 3913 G. C. was amended in 109 O. L. 336, and now provides in part that:

"In anticipation of the collection of current revenues in any fiscal year such corporations may borrow and issue certificates of indebtedness therefore."

Question: In view of such amendment can certificates of indebtedness or notes be issued by a municipality for sinking fund purposes?"

An examination of the opinion of 1918 referred to, as well as an earlier one found in Vol. II, Opinions of Attorney General, 1915, page 1082, shows that the holding to which the Bureau refers in its question was indeed based upon the words "general revenue fund" as occurring in section 3913 of the General Code prior to its amendment in 1921. The elimination of these words at least

destroys the basis of the former opinions and requires re-consideration of the question.

In the opinion of this department the verbal change in the section does produce a result contrary to that formerly reached. The purpose of Section 3913 of the General Code is to authorize borrowing in anticipation of revenues that are already in process of collection and applying the proceeds of the loan to the purposes for which the revenues have been raised, where such application is necessary or expedient to be made prior to the time when the revenues accrue in the ordinary course of fiscal administration. No reason has been found for not applying such a policy to sinking fund or debt retirement revenue as well as to other current revenue. The sinking fund authorities, for example, have no power to borrow money in anticipation of revenues; so that no inference against the apparent meaning of Section 3913 in its present form can be drawn from the existence of any other power to accomplish the same result.

It is therefore the opinion of this department that certificates of indebtedness or notes can lawfully be issued by a municipality for sinking fund purposes under Section 3913 of the General Code and subject to the restrictions thereof. The proceeds of the loan when realized will become a part of the sinking fund to be administered as sinking fund money without further action on the part of council. The proceeds of the sinking fund levy to the extent so anticipated will be automatically appropriated to the payment of the loan with interest and would not constitute general sinking fund revenues.

While the foregoing conclusion seems unavoidable to this department, it likewise seems impossible to conceive of a case where there would be occasion to exercise the power thus newly granted, unless gross mismanagement of the fiscal operations of the municipality had occurred. For since the Griswold Act has separated the function of administering sinking fund from that of paying final judgments, the only obligations chargeable to this sinking fund are those the maturities of which can be arranged for in advance so as to co-ordinate with tax settlement periods.

SECRETARY OF STATE

NEW CORPORATIONS

The Miller Electrical Mfg. Co., Cincinnati, \$100,000. R. M. Green, W. F. Schmudee, J. G. Morris, L. G. Gatch, A. A. Miller.

The Grant & Holding Co., Cleveland, \$1,000. P. V. Trembley, M. E. Kundmiller, Jay Comstock, A. L. Becker, G. E. Schwarm.

The Cleveland Overlook Co., Cleveland, \$500. F. G. Mooney, F. H. Beam, O. E. Shaw, H. Stewig, I. L. Nichols.

The Common Sense Piston Ring Mfg., Lorain, \$25,000. J. H. Davis, F. J. Martin, Thomas McGeachie, W. S. Baldwin.

C. N. Miller Co., Youngstown, \$100,000. C. N. Miller, T. Harrington, J. P. Huxley, C. F. Smith, N. A. Emery.

The George J. Kiebler Co., Toledo, \$50,000. George J. Kiebler, P. C. Tiedman, D. C. Hemley, E. G. Kirby, B. E. Emery.

The Caston Land Co., Cleveland, \$500. J. H. Warson, B. E. Robertson, M. C. Byrnes, M. C. Meyers, N. T. McGann.

The W. H. Amos Co., Columbus, \$30,000. F. E. Humphreys, G. L. Johns, W. H. Amos, C. D. Furgeson, C. Lowensohn.

The Williamsburg Light & Power Co., Williamsburg, \$20,000. J. B. Cover, C. M. Curry, J. F. Knight, H. B. Holden, W. E. Leever, J. F. Hitch.

The Co-operative Industrial Finance Co., Cleveland, \$75,000. E. G. Butler, D. M. Cowan, J. J. Klein, A. D. Mulligan, M. J. Sperber.

The Burlesque Theatre Co., Cincinnati, \$20,000. M. Muller, Fred Gue-thelein, August Kirbert, Fisher Bach-rach, Leon Lederer.

The Defiance Commission Co., Defiance, \$10,000. Peter Zenz, A. A. McLain, Orvil Shindler, George Nolan, J. R. Brondes.

The Kilbane Co., Cleveland, \$3,000. R. J. Moriarty, F. H. Devlyn, E. P. Dowling, J. E. Gallagher, F. M. Healy.

The Patterson Farm Oil Co., Ashland, \$25,000. O. F. Farnsworth, J. H. Steed, M. Farnsworth, J. J. Graska, C. E. Brown.

The Inter-Trade Publishing Co., Cleveland, \$25,000. D. M. Loeb, Benj. Hartstein, Lillian Freeman, J. A. Rothberg, E. I. Siegel.

The County Savings & Loan Co., Port Clinton, \$600,000. M. J. Zimmerman, W. A. Moore, George Hein-icka, G. H. Bisson, O. P. Moore.

The Day & Night Savings and Loan Association, Cincinnati, M. B. Maggini, M. V. Maggini, H. L. Maggini, Irene Hickey, J. L. Hickey.

The Sharpe Motor Co., Canton, \$25,000. C. D. Yengling, R. P. Sharpe, A. H. Etling, W. E. Heller, A. F. Hieronimus.

The National Stamping Co., Cleveland, \$10,000. A. L. Chubb, E. P. Chubb, C. B. Brookhart, H. S. Unke, L. E. Unke.

The Zanesville Hotel Co., Zanes-ville, \$500. O. J. Raile, F. M. Rans-bottom, W. M. Bateman, G. S. Blanchard, W. E. Becher.

The Leonard and Ford Realty Co., Toledo, \$10,000. A. J. Kranz, M. S. Arndt, W. C. Hilt, C. F. Gottschalk, T. E. Walf.

The Kennedy-Rice Co., Cleveland, \$10,000. Mrs. Matie S. Rice, Mrs. Edna R. Kennedy, Mrs. Mary E. Storrs, Jack Kennedy, Malvern E. Schultz.

The G. E. Auto Parts Mfg. Co., Cleveland, \$10,000. A. J. O'Brien, O. C. Eben, Carrie Eben, S. E. Gates, R. E. Cuddy.

The Carrollton Savings & Loan Co., Carrollton, \$1,000,000.00. J. H. Ryan, Edward Crow, C. E. Gallagher, E. P. Creswell, W. S. Schlesgel.

The Vickers Lumber Co. Piedmont, \$25,000. Bert Vickers, B. Shaw, T. A. Hyde, J. W. Vickers.

The White Machine Co., Columbus, \$10,000. Clark White, W. A. White, L. E. Smith, J. W. Whitmer, Margaret L. Smith.

The East Ninth Savings & Loan Co., Cleveland, \$2,500,000. C. A. Mc-Morris, J. I. Whitmer, J. L. Dease, C. E. Gleeson.

The Pfunder-Birnbaum Coal Co., Cleveland, \$5,000. A. V. Birnbaum, F. H. Birnbaum, F. M. Conley, P. M. Keuderle, T. D. Lamb.

The Chemical Rubber Co., Cleveland, \$50,000. Harry Wolpaw, M. Junke, M. Young, C. L. Brueggemyer, L. Brick.

The Ames Built Sales Corporation Co., Cleveland, \$25,000. S. H. Humphreys, Margaret A. Humphreys, J. P. Reed, J. R. Humphreys, Louis Low.

The Brookside Realty Co., Cleveland, \$500. J. F. Pluemacher, L. M. Blair, B. H. Farnsworth, Conrad Hessler, George H. Camp.

The S. and S. Barbershop Co., Cleveland, \$10,000. Ben Sheer, Fred K. Spanos, Sam Rosenberg, Miriam Gaff, Reba Benalt.

The Serva Drink Co., Springfield, \$75,000. R. C. Leslie, A. H. Penfield, J. A. Poss, F. M. Krapp, A. C. Messenger.

The Thor Incinerator Co., Cleveland, \$2,000. C. T. McConnell, R. W. Sanborn, C. T. Rich, H. F. Pattie, H. J. Leasure.

The Lincoln Accessory Co., Cincinnati, \$10,000. Wm. L. Henne, J. M. Herman, Robert Black, Mary E. Hern-don.

The Standard Auto Repair Co., Akron, \$15,000. H. E. Dixon, J. W. Sanderson, F. A. Stuart, G. J. Breckenridge, M. L. Young.

The Farmers Cooperative Service Co., Cincinnati, \$10,000.00. C. W. Wright, J. F. Enger, R. B. Wright, F. H. McClellen, Edwards Ritchie.

The Silver & Morgenstern Electric Co., Cleveland, \$30,000. Harry Sheinkman, Mollie Friedman, Michael Sheinkman, Morris Friedman, Wallace Anderson.

The A. R. Park Drug Co., Cincinnati, \$25,000. H. J. Siebenthaler, H. B. Jones, Carl M. Jacobs, Jr., E. L. Gray.

The Hruby Music Co., Cleveland, \$10,000. Frank Hruby, Alois Hruby, Fred Hruby, Charles Hruby.

The Liquid Leaf Mold Co., Dayton, \$100,000. Joseph Herzstam, Louis D. Poock, George Poock, G. L. Stallings, Sidney G. Kusworm.

The Euclid Fuel & Supply Co., Euclid Village, \$10,000. D. M. Price, R. S. Etter, J. R. Boyd, George Collingwood, A. F. Ennis.

The Oak and 18th Confectionery Co., Columbus, \$10,000. James E. Hall, Chas. Falls, W. R. Bruce, Thos. H. Sheldon, John S. Frickey.

The Atlas China Co., Niles, \$550,000. R. H. Patchin, M. E. Gillmer, Pauline Jordan, J. G. Unger, D. E. Jones.

The Morland-Heights Development Co., Cleveland, \$500. H. A. Marting, R. M. Boyd, E. H. Jones, W. A. Dougherty, Leslie Nichols.

The Dominion Sand and Gravel Co., Cleveland, \$500. J. M. McSweeney, Edith I. Pierson, F. B. Stief, P. L. Frailey, H. G. Eichelberger.

The Fledder-Johann-McCrackin Co., Elyria, \$5,000. Edwin Fledderjohann, G. D. McCrackin, F. A. Stetson, Kathleen, Vaughn, Anthony Nieding.

The Pathfinder Publishing Co. Elyria, \$10,000. R. F. Vandermark, K. L. Cage, H. D. Segbert, W. H. Stark, Vincent Walsh.

The Farmington-Fairfax Welfare Co., Toledo, \$10,000. A. E. Watkins, E. J. Rey, L. R. Stahlwood, E. R. Cobb, Wallace Gibbens, William Siefert.

The Ohio Jewelry Co., Cleveland, \$5,000. J. L. Spitz, Marie Khas, David L. Schiff, Wm. Morrison, M. Welensky.

The Puritan Dairy Co., Toledo, \$500. L. H. Schminck, P. K. Chase, E. B. Pierce, L. B. Mueller, F. E. Deihlman.

The Ohio Mineral Fume Treatment Co., Canton, \$35,000. R. F. Twyford, E. E. Lautzenheiser, E. E. Twyford, C. H. Brown, Dorothy L. Lautzenheiser.

The Toledo Spring Service Co., Toledo, \$10,000. H. J. Herman, E. H. Hunter, Robert Hunter, Scott Stahl, Jeanette MacDougal.

The Unger-Neiman Co., Youngstown \$50,000. Morris Unger, Harry Neiman, J. H. Unger, Eugene Unger, Irwin Elefant.

The H. E. M. Mfg. Co., Hamilton, \$10,000. E. J. Hibner, L. P. Hurm, J. May, Oscar Eberhardt, C. W. Hibner.

The Beachland Department Store, Cleveland, \$10,000. M. M. Bduml, C. I. Goldsmith, H. S. Goldsmith, Joseph Stashower, J. W. Little.

The Sportsmen's Manufacturing Co. Columbus, \$10,000. W. A. Ballard, D. W. Ballard, F. C. Butler, M. F. Ballard.

The Ohio Typewriter Co., Youngstown, \$10,000. E. V. Graves, L. M. Marvin, F. B. Dunmore, M. F. Boucher, M. C. Boucher.

The Tenants Realty Co., Sandusky, \$95,000. W. F. Seitz, F. J. Seitz, C. H. Bauman, J. H. Bauman, John Bauman.

The Liebman-McElvey Co., Youngstown, \$100,000. J. F. Bonnell, F. R. Wood, J. C. Aertsinger, C. A. Manchester, L. M. Montgomery.

The Precision Threading Machine & Mfg. Co., Cleveland, \$500. C. N. Krieg, E. W. McGraw, M. Leahy, M. L. Sammon, O. G. Painter.

The Stiger Lumber Coal Co., Bradner, \$15,000. A. A. Stiger, C. E. Llewellyn, I. E. Chronister, J. W. Stiger, C. I. Riley.

The Sleepy Hollow Estates Co., Cleveland, \$30,000. R. W. Sanborn, H. E. Hollister, P. D. Baires, C. T. Rich, H. F. Pattie.

The Cleveland Trading Co., Cleveland, \$100,000. Judson Imel, J. Mistr, W. B. Gerow, E. W. Miller, F. C. Jewell.

The Home Shoe Co., Cleveland, \$10,000. W. W. Rosenzweig, F. F. Chapin, A. Klima, J. N. Galvin, H. S. Backowski.

The Northern Ohio Dry Cleaning Co., Cleveland, \$25,000. F. J. Kubec, C. A. Miller, A. M. Kral, James Becvar, Jos. Janovsky.

The Supreme Rubber Products Co., Cleveland, \$25,000. R. H. Rhotehamel, W. R. Kerr, E. M. Ohman, R. M. Walker, J. H. Cox.

The Stanley-Ohio Co., Cleveland, \$500. L. S. Sobel, F. S. Taylor, H. Dobrin, J. E. Smith, M. Bonnist.

The Jonathan H. Winters Co., Dayton, \$500. J. H. Winters, A. P. Smith, A. V. Howell, H. O. Wachter, R. T. Moore.

The Inter-Cities Oil Co., Springfield, \$25,000. J. P. Young, J. A. Campbell, B. F. Bellew, Betty Endress, A. J. Dowell.

The Gosline Trucking Co., Toledo, \$10,000. H. G. Haywood, Carl Seigrist, W. J. Burns, L. J. Metzgar, E. Rheinfrank.

The Cleveland Fender Sales Co., Cleveland, \$10,000. C. T. McConnell, C. T. Rich, H. F. Pattie, H. N. Klima, I. Gough.

The Ohio Distributing Co., Cleveland, \$10,000. W. W. Rosenzweig, F. F. Chapin, Louis Galvin, J. N. Galvin, A. Klima.

The Lorain Bond and Mortgage Co., Lorain, \$500. J. B. McGuire, J. S. Nocar, J. J. Majorsack, Alev Hudak, S. Krateski.

The Deuber Avenue Supply Co., Canton, \$5,000. L. L. Breitenstein, G. J. Pontius, H. J. Lintner, T. H. Leahy, C. A. Breitenstein.

The Carl Handy Coal Co., Cleveland, \$10,000. C. M. Handy, F. L. Hole, R. W. Jeremiah, J. R. Jewitt, M. Korabek.

The Mortgage Brokerage Co., Columbus, \$800. A. G. Gilmour, W. G. Scott, J. E. Haney, G. G. Rindershott, J. F. Heizer.

The East Eighty-Ninth Street Improvement Co., Cleveland, \$10,000. S. A. Davies, Max Marmorstein, D. D. Kimmel, W. L. Mould, E. B. Comyns.

The Leach-Guion Construction Co., Cleveland, \$5,000. O. V. Liggett, C. M. Malloy, James Male, T. C. Moore, A. S. Haskell.

The T. J. Callahan Co., Dayton, \$200,000. T. J. Callanan, J. T. Roth, K. S. Meuche, W. F. Myers, P. N. Sigler.

The Temple Clothes Shoppe Co., Cleveland, \$10,000. I. C. Harris, R. H. McQuat, F. K. Howard, A. S. Stevens, L. W. Court.

The Evans Auto Sales Co., Akron, \$10,000. T. O. Evans, Ida Melander, C. C. Hoyt, B. G. Thomas, M. C. Stanley.

The Eckert-Reed-Porter-Co. Youngstown, \$25,000. M. H. Eckert, C. E. Reed, G. N. Porter, C. A. Mitchell, E. H. Beckman.

The All-American Motor Sales Co., Toledo, \$10,000. W. F. Miller, W. W. Campbell, J. H. Maloney, B. O'Brien, H. H. Miller.

The Berg-Wellman Co., Youngstown, \$5,000. J. Wellman, G. C. Berg, T. E. Antonelli, Helen Hoovler, M. E. Brunswick.

The Surety Savings & Loan Co., Dover, \$1,500,000. F. M. Dennison, B. J. Fusner, C. W. Barnes, M. F. Griffith, H. H. Montis.

The Sunny Brook Co., Sharline, \$10,000. A. P. James, Stanley Cotten, O. Smith, James Lewis, Mellon Coleman, Leonard McCormick.

The J. and J. Rotary Pump Co., Cleveland, \$200,000. J. F. Jaworowski, F. W. Clarke, F. T. Kuhn, J. F. Munhall, F. H. Clarke, Joseph Benko.

The Keystone Construction Co., Columbus, \$25,000. C. A. Robinson, C. J. Breckenridge, C. A. Sampson, C. M. Watts, M. S. Boyd.

The Wilson-Bennett Drug Co., Cleveland, \$25,000. J. S. Hurd, P. A. McNamara, B. W. Griffin, Merceda Glora, E. S. Stevens.

The Bunn-Rae Co., Cleveland, \$5,000. E. M. Kenvin, L. Schenkel, E. S. Couzens, R. N. Yulloch, D. S. Falls.

The Continental Shoe Repair Co., Cincinnati, \$25,000. I. Rosenbaum, J. E. Rappoport, R. A. Rappoport, L. T. Wise.

The Pick-et-tade Co., Columbus, \$500. D. K. Grubb, F. R. Fischer, Wm. Hunt, A. B. Pickett, W. F. Grose.

The Old Dominion Mortgage Co., Mentor, \$500,000. A. M. Snyder, D. K. K. Ford, G. M. Roudeshush, L. E. O'Callaghan, N. I. Young.

The Flash Sales Co., Cleveland, \$30,000. F. B. Fults, M. L. Kunc, F. E. Preiffer, G. E. Senkbeil, E. J. Strickland.

The O. B. Co., Lima, \$100,000. W. H. Nungester, J. J. Yoder, J. V. Smiley, J. A. Meinerding, A. L. Ransbottom.

The Lincoln Real Estate Co., Cincinnati, \$500. Frank Bernard, J. F. Burns, H. J. Groff, E. J. Kennedy, R. German.

The Little Hat Mfg. Co., Cleveland, \$10,000. R. Little, S. Lanz, L. E. Krejci, M. E. Zellner, W. H. Schwartz.

The Auburn Baking Co., Cleveland, \$500. Michael Lazuka, Anton Browka, Wm. Wolanski, S. Paliwoda, P. Tarnavsky.

The South Side Dry Goods Co., Cleveland, \$500. M. Lazuka, S. Paliwoda, A. Brewka, W. Wolanski, J. S. Kaufman.

The Independent Market Co., Toledo, \$10,000. Martin, Chas. Tafelski, Geo. Jagielski, Stephen Jagielski.

The National Composition Mfg. Co., \$50,000. C. F. Schriner, E. R. Kelly, C. C. Scheible, W. W. Kinsley, J. F. Kinsley.

The Stop-9 Motor Co., South Euclid Village, \$500. C. E. Mizer, Ben Kahn, H. W. Caldwell, Jr., R. P. Abbey, W. H. Thomas.

The Central Cannery Sales Co., Columbus, \$50,000. W. C. Gilmore, J. Stoop, C. G. Vanderwort, T. E. Dye, J. W. Wood, J. I. Smith, H. B. Stokes.

The Millwood White Sand Co., Jackson, \$120,000. D. H. Armstrong, D. F. Shafer, J. H. Klett, E. A. Davis, W. E. Hassey.

The Chandler Electric Service & Supply Co., St. Marys, \$5,000. E. F. Chandler, L. H. Chandler, G. M. Fissel, B. L. McIntire, F. H. Baxter.

The Mortgage Participation Co., Wickliffe, \$650. N. McGiffin, E. R. Bolton, L. M. Laurinzo, W. F. Maurer.

The Michon Accelerator Co., Toledo, \$5,000. J. H. M. Michon, D. Marleau, L. W. Cawood, B. Michon, E. C. Froehlich.

The Freight Express Co., Cleveland, \$500. C. S. Roed, T. Stevenson, V. Glessner, C. S. Reed, E. Kopp.

The Remac Realty Co., Columbus, \$25,000. W. E. MacManiman, E. W. Tibbals, Eugene Gray, J. Cornet, C. P. Outhwaite.

The Liberty Mortgage and Discount Co., Youngstown, \$1,000. F. J. Seinhauser, T. Horner, J. P. Francis, T. Hewitt, J. P. Francis, J. McCleary.

The Hanco Cigar Co., Wellston, \$10,000. M. M. Weldon, F. D. Hann, H. H. Stephenson, H. E. Davis, E. S. DeLay.

The Kee Pemartus Water Co., Cleveland, \$500. W. O. Conger, C. C. Herron, C. M. Knight, F. M. Pritts, R. C. Weider.

The Lake Shore Sales Co., Cleveland, \$500. J. C. Pyle, C. R. Spahn, I. E. Windisch, J. F. Flynn, Jr., H. N. Hunt.

The Greenbaum Garment Co., Cincinnati, \$10,000. L. N. Greenbaum, A. Greenbaum, Corrine Bennett, Chester DuBois, R. Greenbaum.

The Aceto Oil Burner Co., Cleveland, \$30,000. J. H. LaCroix, C. I. Cartwright, E. M. Williams, J. L. Rice, L. T. Hanson.

Increases

The Alloy Electric Steel Castings Co., Warren, \$150,000 to \$450,000.

The International-Dayton-Products Co., Dayton, \$55,000 to \$200,000.

The Refiners Oil Co., Dayton, \$400,000 to \$700,000.

The Hupp Products Co., Columbus, \$125,000 to \$500,000.

The Weldless Tube Co., Wooster, \$300 to \$1,000,000.

The Edson and Wise Co., Middletown, \$10,000 to \$75,000.

The Falls Tire Co. of Youngstown, Youngstown, \$10,000 to \$15,000.

The Castalia Elevator & Supply Co., Castalia, \$15,000 to \$25,000.

The Alliance Vitreous China Co., Alliance, \$50,000 to \$100,000.

The Becker Steamship Co., Cleveland, \$350,000 to \$1,700,000.

The Bristol Block Coal Co., Logan, \$25,000 to \$100,000.

The P. J. Malott Hat Co., Columbus, \$10,000 to \$25,000.

The City Savings and Loan Co., Cincinnati, from \$15,000 to \$50,000.

The Antl Roofing Co., Cleveland, \$2,500 to \$10,000.

The Russell Hall Apartment Co., Cleveland, \$10,000 to \$65,000.

Decreases

The Damar Realty Co., Cleveland, \$250,000 to \$150,000.

PUBLIC UTILITIES COMMISSION

No. 2483—In the Matter of the Joint Application of The Richland Public Service Company, The Ashland Gas and Electric Light Company, and The Ohio Public Service Company for Permission to Purchase the Properties and Assets of Said The Richland Public Service Company and The Ashland Gas and Electric Light Company.—Supplemental and Final Order.

(Dated July 18, 1922.)

The Commission on having heretofore, to-wit: Upon the fourteenth day of February, 1922, by preliminary order, duly made and entered herein, found that, for purchase and sale purposes, the value of the property of The Richland Public Service Company and The Ashland Gas and Electric Light Company was not less than the sum of \$6,975,500.00; consented to and authorized the sale by said companies, of all their property, rights and other assets to The Ohio Public Service Company, and the purchase of the same by said last named company for a partial consideration of \$6,978,500.00, such consideration to become final in the event of the failure of the applicants thereafter to show to the Commission a greater value for said property as a basis for increasing said consideration, and continued this matter for the receipt and consideration of further proof as to the value of the aforesaid properties:

This day, after full hearing, said matter again came on for consideration upon the pleadings and exhibits filed herein, the record made upon said hearing, and after an independent investigation and examination, by the Commission, of said companies' properties and books.

The Commission being fully advised in the premises, now finds:

That, for purchase and sale purposes, the property of said The Richland Public Service Company and The Ashland Gas and Electric Light Company is of a value of not less than the sum of \$7,275,900.00,

and is satisfied that the said preliminary order, so made and entered herein as aforesaid, should be modified and amended accordingly. It is, therefore,

Ordered, That the order, made and entered herein upon the fourteenth day of February, 1922, be, and hereby it is modified and amended in the following regard, and no other, to-wit:

"It is, therefore,

"Ordered, That said The Richland Public Service Company and said The Ashland Gas and Electric Light Company be, and hereby they each are authorized to sell and convey all of their properties, rights and other assets and business, as the same are more fully described and set forth in the exhibits filed herein, which exhibits hereby are made parts of this order by reference, to said The Ohio Public Service Company; and said The Ohio Public Service Company hereby is authorized to purchase and acquire said properties, rights business and other assets of said aforementioned corporations and to pay therefor a consideration of \$7,275,900.00, as provided by the preliminary and final orders, made and entered as of dates February fourteenth, 1922, and July eighteenth, 1922, respectively, in proceeding No. 2484. It is further

"Ordered, That, forthwith upon the exercise of the authority herein granted, said companies shall file with this Commission schedules providing for their respective withdrawal from and inauguration of service within the territory now served by means of the property herein authorized to be sold. It is further

"Ordered, That nothing herein shall be construed to be a consent to or approval, by this Commission, of any increase in rates or diminution of service within the territory now served by means of the property herein authorized to be sold; nor shall the findings hereinbefore set forth as to value, rates or service be binding upon this Commission in any future proceeding involving the subject of rates or service."

*

Advanced Utility Rate Proceeding No. 94.—In the Matter of the Proposed Rates and Charges of The Mt. Gilead Water, Light, Heat and Power Company for Electric Service at Mt. Gilead, Ohio, Filed to Become Effective July 20, 1922.

(Dated July 19, 1922.)

The Mt. Gilead Water, Light, Heat and Power Company, having on the twentieth day of June, 1922, filed with this Commission its schedule designated P. U. C. O. No. 1, providing certain increased rates and charges for electric service furnished in the Village of Mt. Gilead, Ohio, to become effective July 20, 1922:

And, certain patrons of said company, having under date of July 18, 1922, filed protest against such rates and charges, alleging among other things that such proposed rates and charges are excessive, unjust and unreasonable, and the Commission finding that the rights and interests of the public may be injuriously affected by such increased rates and charges, it is

Ordered, That this Commission enter upon a hearing concerning the propriety of said increased rates and charges set forth in said schedule P. U. C. O. No. 1, and that said hearing be begun at nine o'clock A. M., Central Standard time, Tuesday, September 26, 1922, at the hearing room of this Commission, State Office Building, Columbus, Ohio. It is further

Ordered, That the operation and use of the rates and charges contained in said schedule be suspended and that the effective date thereof be, and hereby it is postponed for a period of thirty days from July 20, 1922. It is further

Ordered, That a copy of this order be filed with said schedule in this office, and that copy be forthwith served upon the said The Mt. Gilead Water, Light, Heat and Power Company, which hereby is made a respondent in this proceeding and notified of the time and place of the hearing herein assigned.

✱

No. 923—In the Matter of the Application of The Baltimore and Ohio Railroad Company and The Baltimore and Ohio Southwestern Railroad Company for and Order Authorizing The Baltimore and Ohio Southwestern Railroad Company to Issue Bonds.—Order Revoked.

(Dated July 28 1922.)

This day, this matter again came on for consideration upon the pleading, styled "Petition" of the applicant The Baltimore and Ohio Southwestern Railroad Company, representing and showing to the Commission that, of the \$2,000,000.00, principal sum, of its five per cent. mortgage bonds, due December first, 1995, authorized to be issued by the order made and entered herein upon the twenty-fifth day of June, 1918, it has issued and disposed of such bonds of the principal sum of \$1,961,500.00 and does not desire to make further issue of bonds under said order of such date, and praying that an order may be entered revoking the authority to issue the remainder, \$38,500.00, principal sum, of said bonds authorized to be issued under said order of June twenty-fifth, 1918. It is, therefore,

Ordered, That the order, made and entered herein upon the twenty-fifth day of June, 1918, in so far as the same consents to and authorizes the issue and disposition, by The Baltimore and

Ohio Southwestern Railroad Company, of its five per cent. mortgage bonds, due December first, 1995, of the principal sum of thirty-eight thousand, five hundred dollars (\$38,500.00) in addition to such bonds which have been issued and disposed of under the authority of said order, be, and hereby the same is revoked and rescinded.

*

No. 2574—In the Matter of the Application of The Cleveland-Youngstown Bus Company, of Cleveland, Cuyahoga County, Ohio.—Prayer Granted.

(Dated July 28, 1922.)

This day, after full hearing, this matter came on for consideration upon the application of The Cleveland-Youngstown Bus Company, (a corporation duly organized and existing under and by virtue of the laws of the State of Ohio, for the purpose of operating motor busses for the transportation of passengers and property between the City of Cleveland, and the City of Youngstown, Ohio), asking the consent and authority of this Commission to issue and dispose of its common capital stock of the par value of fifty thousand dollars, the proceeds arising from the sale thereof to be used to pay its organization and other preliminary expenses, purchase six motor busses and provide a working capital.

The Commission, being fully advised in the premises, finds from the pleadings and exhibits filed herein and the evidence offered at the hearing thereupon:

That the applicant is incorporated for the purpose of and is arranging to engage in the business of operating a motor bus line between the cities of Cleveland and Youngstown, Ohio, and has contracted indebtedness for and on account of the following purposes in the following sums, viz:

Its organization and other preliminary expenses, \$1,000,
The purchase of six (6) fully equipped Maccar motor busses at \$6,950.00 each, \$41,700.00,

That for the carrying on of its business, the applicant will require a working capital of the sum of \$7,300.00, and

That the issue of applicant's common capital stock of the par value of \$50,000.00 is reasonably required, and the money to be procured thereby, necessary for the acquisition of property, the payment and discharge of indebtedness and the maintenance and improvement of applicant's service, as aforesaid,

and is satisfied that consent and authority for the issue and dis-

position of said common capital stock should be granted. It is, therefore,

Ordered, That said The Cleveland-Youngstown Bus Company be, and hereby it is authorized to issue its common capital stock of the par value of fifty thousand dollars (\$50,000.00), and that said capital stock be sold for the highest price obtainable but not less than the par value thereof. It is further

Ordered, That the proceeds arising from the sale of said capital stock be, by the applicant, devoted to and used for the following purposes, and no others, to-wit:

The payment of its organization and other preliminary expenses, \$1,000.00,

The purchase of six (6) fully equipped Maccar motor busses at the contract price of \$6,950.00 each, \$41,700.00,

To be used as a working capital, \$7,300.00.

It is further

Ordered, That the applicant make verified report to this Commission of the issue and disposition of said common capital stock, and the expenditure of the proceeds thereof pursuant to the terms and conditions of this order.

3

No. 2613—In the Matter of the Application of The Baltimore and Ohio Railroad Company and The Baltimore and Ohio Southwestern Railroad Company for an Order Authorizing The Baltimore and Ohio Southwestern Railroad Company to Issue Bonds.—Prayer Granted.

(Dated July 28 1922.)

This day, it appearing to the Commission from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, this matter came on for consideration upon the application of The Baltimore and Ohio Southwestern Railroad Company, (The Baltimore and Ohio Railroad Company uniting in said application) praying for the consent and authority of this Commission authorizing the issue of \$200,500.00, principal amount, of Improvement Mortgage Bonds, and the delivery of the same to said The Baltimore and Ohio Railroad Company in payment of an equal amount of the indebtedness of the applicant to said company for an on account of advances, between the dates May first, 1921 and December

thirty-first, 1921, which were invested in additions, extensions and improvements to applicant's lines and property:

Upon consideration whereof, and being fully advised in the premises and having examined such books, papers, accounts and reports, and having made such inquiries and investigations as by it deemed proper and necessary, and it appearing that the Interstate Commerce Commission, by order, made and entered as of date May twentieth, 1922, in Finance Docket No. 2325, finding that the applicant is indebted to said The Baltimore and Ohio Railroad Company in the sum of \$360,805.69 for and on account of additions, extensions and improvements to its property and facilities, duly consented to and authorized to the issue and delivery to said company, by the applicant, of applicant's said Improvement Mortgage Bonds of the principal sum of \$860,500.00, this Commission finds:

That, for and on account of advances which were invested in additions, extensions and improvements to its facilities between the dates May first, 1921 and December thirty-first, 1921, and not heretofore capitalized or authorized to be capitalized by order of this Commission, the applicant is indebted to The Baltimore and Ohio Railroad Company in the sum of \$860,805.69, and, that, of such expenditures, the sum of \$200,940.01 was so expended for additions, extensions and improvements to applicant's property and facilities within the State of Ohio;

That the issue and delivery to said The Baltimore and Ohio Railroad Company, of applicant's said Improvement Mortgage Bonds of the principal sum of \$200,500.00 is reasonably required and necessary for the payment and discharge or lawful refunding of such indebtedness allowable to the State of Ohio, and

Insofar as this Commission has the authority so to find, that the issue and delivery to said The Baltimore and Ohio Railroad Company of applicant's said Improvement Mortgage Bonds of the additional principal sum of \$660,000.00 is reasonably required and necessary for the payment and discharge or lawful refunding of the balance of such indebtedness,

and is satisfied that, in so far as at has the authority so to do, consent and authority for the issue and delivery of applicant's said Improvement Mortgage Bonds, of the total principal sum of \$860,500.00 should be granted. It is, therefore,

Ordered, That, in so far as this Commission has the authority so to do, said The Baltimore and Ohio Southwestern Railroad Company be, and hereby it is authorized to issue and deliver to The Baltimore and Ohio Railroad Company, its Improvement Mortgage

Bonds, bearing date of issue maturing December first, 1995, and bearing interest at the rate of six percentum per annum, of the total principal sum of eight hundred and sixty thousand, five hundred dollars (\$860,500.00), in payment and discharge of an equal amount of its indebtedness to said The Baltimore and Ohio Railroad Company for and on account of the provision of additions, extensions and improvements to its property and facilities within the period May first, 1921 to December thirty-first, 1921, inclusive, such bonds to be used by that company only for the purpose of pledging the same as further security under certain of its mortgages, and no consent or authority is hereby given for any sale or other use or disposition of said bonds by the applicant herein or said The Baltimore and Ohio Railroad Company; such bonds, the issue of which is so consented to and authorized, to include Improvement Mortgage Bonds of the principal sum of two hundred thousand, five hundred dollars (\$200,500.00) for which the consent and authority of this Commission is hereby specifically granted said The Baltimore and Ohio Southwestern Railroad Company as hereinabove found and determined to be reasonably required and necessary. It is further

Ordered, That verified report be made to this Commission of the issue and disposition of said bonds pursuant to the terms and conditions of this order.

3

No. 2594—In the Matter of the Application of The Cambridge Home Telephone Company for Authority to Issue Capital Stock. Prayer Granted.

(Dated July 31, 1922.)

This day, it appearing to the Commission from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, this matter came on for consideration upon the application of The Cambridge Home Telephone Company, (a corporation duly organized and existing under and by virtue of the laws of the State of Ohio), asking the consent and authority of this Commission to issue its common capital stock of the par value of \$36,400.00, the proceeds arising from the sale thereof to be applied toward the reimbursement of its treasury for the moneys,

not procured by the issue of stock, bonds, notes or other evidences of indebtedness, expended therefrom, within the five years next preceding the date of the filing of the application herein, for capital purposes.

The Commission, being fully advised in the premises, finds from the pleadings and exhibits filed herein and its independent inquiry and investigation thereupon:

That, within the five years next preceding the date of the filing of the application herein and, specifically within the period January 1, 1920 to May 31, 1922, inclusive, the applicant actually expended from its treasury for the construction of additions, extensions and improvements to its facilities, not heretofore capitalized or authorized to be capitalized by order of this Commission, the sum of \$44,143.86, none of which was procured by the issue of stock, bonds, notes or other evidences of indebtedness, and

That the issue of applicant's common capital stock of the par value of \$36,400.00 is reasonably required and the money to be procured thereby, necessary for the reimbursement of its treasury for and on account of the aforesaid uncanceled, capital expenditures therefrom,

and is satisfied that consent and authority for the issue and disposition of said capital stock should be granted. It is, therefore,

Ordered, That said The Cambridge Home Telephone Company be, and hereby it is authorized to issue its common capital stock of the par value of thirty-six thousand, four hundred dollars (\$36,400.00), and that said capital stock be sold for the highest price obtainable but not less than the par value thereof. It is further

Ordered, That the proceeds arising from the sale of said capital stock be, by the applicant, devoted to and used for the reimbursement of its treasury, to the extent of such proceeds, for the sum of \$44,143.86, none of which was procured by the issue of stock, bonds, notes or other evidences of indebtedness, actually expended therefrom, within the period January first, 1920, to May thirtyfirst, 1922, inclusive, for the construction of additions, extensions and improvements to its facilities, not heretofore capitalized or authorized to be capitalized by order of this Commission, and for no other purpose whatsoever. It is further

Ordered, That the applicant make verified report to this Commission of the issue and disposition of said capital stock and the expenditure of the proceeds thereof pursuant to the terms and conditions of this order.

No. 2607—In the Matter of the Joint Application of Charles Diehl, Trading as The Milford Center Telephone Exchange, and The Milford Center Telephone Company, a Corporation for Consent and Authority to Sell and Purchase Property. Prayer Granted.

(Dated July 31, 1922.)

This day, it appearing to the Commission from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, this matter came on for consideration upon the joint application of Charles Diehl, trading as The Milford Center Telephone Exchange, and The Milford Center Telephone Company, (a corporation duly organized and existing under and by virtue of the laws of the State of Ohio,) asking the consent to and approval, by this Commission, of the sale by said first named applicant, and the purchase and acquisition by the latter of all the property, rights, business and other assets composing said The Milford Center Telephone Exchange.

The Commission, being duly advised in the premises, finds from the pleadings and exhibits filed herein and its independent inquiry and investigation thereupon:

That, for purchase and sale purposes, the value of the property, business and other assets composing The Milford Center Telephone Exchange is not less than the sum of \$30,000.00, and

That the public will, upon the consumation of said proposed sale and purchase of public utility property, be furnished adequate service for a just and reasonable rate, charge, toll or rental therefor,

and is satisfied that consent and authority for said sale and purchase of such public utility property should be granted. It is, therefore,

Ordered, That the said Charles Diehl be, and hereby he is authorized to sell and convey to The Milford Center Telephone Company all of the property, rights, business and other assets composing The Milford Center Telephone Exchange; and said The Milford Center Telephone Company hereby is authorized to purchase said property and to pay therefor the agreed consideration of \$15,000.00 in the form and manner provided by the order this day made and entered in proceeding No. 2608. It is further

Ordered, That, forthwith upon the exercise of the authority herein granted, said parties file with this Commission schedules

providing for their respective withdrawal from and inauguration of service within the territory now served by means of said property. It is further

Ordered, That nothing herein shall be construed to be a consent to or approval, by this Commission, of any increase in rates or diminution of service within the territory now served by means of said property, nor shall the findings hereinbefore set forth as to the value of said property, rates and service, or the acquaintance in the passing of said agreed consideration, be binding upon this Commission in any future proceeding involving rates and service.

36

No. 2603—In the Matter of the Application of The Milford Center Telephone Company for Consent and Authority to Issue and Dispose of Capital Stock. Prayer Granted.

(Dated July 31, 1922.)

This day, it appearing to the Commission from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, this matter came on for consideration upon the application of The Milford Center Telephone Company, a corporation duly organized and existing under and by virtue of the laws of the State of Ohio, asking the consent and authority of this Commission to issue and deliver, in full payment of the consideration for all the property, rights, business and other assets composing The Milford Center Telephone Exchange, (the purchase and acquisition of which, by the applicant, from one Charles Diehl was duly consented to and authorized by the order, this day made and entered in proceeding No. 2607), its common capital stock of the par value of \$8,000.00 and its seven per cent. cumulative preferred capital stock of the par value of \$7,000.00.

The Commission, being fully advised in the premises, finds from the pleadings and exhibits filed herein and its independent inquiry and investigation thereupon:

That, for purchase and sale purposes, the value of the property, rights, business and other assets composing said The Milford Center Telephone Exchange is not less than the sum of \$15,000.00, and,

That the issue and disposition of applicant's common capital stock of the par value of \$8,000.00 and its preferred capital stock of the par value of \$7,000.00 is reasonably required

and necessary for the acquisition of said property aforesaid, and is satisfied that consent and authority for the issue and disposition of said capital stock should be granted. It is, therefore,

Ordered, That said The Milford Center Telephone Company be, and hereby it is authorized to issue its common capital stock of the par value of eight thousand dollars (\$8,000.00) and its seven per cent. cumulative, preferred capital stock of the par value of seven thousand dollars (\$7,000.00). It is further

Ordered, That said capital stock be, by the applicant, issued, at par, to one Charles Diehl in full and final payment of the consideration for all the property, rights, business and other assets composing The Milford Center Telephone Exchange, (the purchase of which, by the applicant, was duly consented to and authorized by the order this day made and entered in proceeding No. 2607), and used for no other purpose whatsoever. It is further

Ordered, That the applicant make verified report to this Commission of the issue and disposition of said capital stock pursuant to the terms and conditions of this order. It is further

Ordered, That the finding hereinbefore set forth as to the value of said property and the within authorization of the capitalization of the agreed consideration to be passed therefor, shall not be binding upon this Commission in any future proceeding involving rates and service.

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No. 2615—In the Matter of the Application of The Morrow Public Service Company to Issue Stock. Prayer Granted.

(Dated July 31, 1922.)

This day, it appearing to the Commission from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, this matter came on for consideration upon the application of The Morrow Public Service Company, (a corporation duly organized and existing under and by virtue of the laws of the State of Ohio), asking the consent and authority of this Commission to issue its common capital stock of the par value of \$17,000.00 and its seven per cent. preferred capital stock of the par value of \$34,000.00, the proceeds arising from the sale thereof to be used

to construct and equip a high tension electric transmission line from Newman's Bridge, located two miles north of Prospect, Ohio, where the applicant will connect with and purchase energy from The Columbus, Delaware and Marion Electric Company, to the villages of Cardington and Mt. Gilead, Ohio, and pay its organization expenses.

The Commission, being fully advised in the premises, finds from the pleadings and exhibits filed herein and its independent inquiry and investigation thereupon:

That the applicant has in contemplation, or under contract, the construction and equipment of an electric transmission line, some twenty-one miles, from Newman's Bridge, via Cardington to Mt. Gilead, Ohio, the cost of which has been conservatively estimated at the sum of \$40,350.00;

That the applicant's organization expenses will reasonably amount to the sum of \$500.00, and

That the issue of applicant's common capital stock of the par value of \$15,400.00 and its referred capital stock of the par value of \$30,000.00 is reasonably required, and the money to be procured thereby, necessary for the payment and discharge of indebtedness and the construction, completion, extension and improvement of applicant's facilities, as aforesaid,

and is satisfied that consent and authority for the issue and disposition of such capital stock should be granted. It is, therefore,

Ordered, That said The Morrow Public Service Company be, and hereby it is authorized to issue its common capital stock of the par value of fifteen thousand, four hundred dollars (\$15,400.00) and its seven per cent. preferred capital stock of the par value of thirty thousand dollars (\$30,000.00) and that said capital stock be sold for the highest price obtainable but not less than the par value of said common capital stock nor less than eightyfive per centum of the par value of said preferred capital stock. It is further

Ordered, That any discount arising from a sale of said preferred capital stock for less than the par value thereof be extinguished pursuant to the rules and regulations heretofore prescribed by this Commission. It is further

Ordered, That the proceeds arising from the sale of said capital stock be, by the applicant, devoted to and used for the following purposes, and no others, to wit:

The payment of applicant's organization expenses, \$500.00.

The construction and equipment of a high tension electric transmission line from Newman's Bridge, located two miles north of Prospect, Ohio, where applicant will connect with and purchase energy from The Columbus, Delaware and Marion Electric Company; some twenty-one miles to the villages of Cardington and Mt. Gilead, Ohio, the cost of which is estimated at the sum of \$40,350.00.

It is further

Ordered, That the applicant make verified report to this Commission, semiannually, within fifteen days after the close of each calendar semiannual period, of the issue and, in reasonable detail, the expenditure of the proceeds of said capital stock pursuant to the terms and conditions of this order. It is further

Ordered, That said application, insofar as it asks consent and authority to issue common capital stock of the additional par value of one thousand, six hundred dollars (\$1,600.00) and preferred capital stock of the additional par value of four thousand dollars (\$4,000.00), be, and hereby the same is denied.

✽

Advanced Utility Rate Proceeding No. 97—In the Matter of The Ohio Public Service Company's Application to Establish and File Increased Rates and Charges for Certain Power Service Upon One Day's Notice.

(Dated July 31, 1922.)

This day this matter came on for consideration upon the application of The Ohio Public Service Company for an order authorizing said company to place in effect upon one day's notice emergency schedule providing certain increased rates and charges for Wholesale Power service—Primary Voltage—furnished to consumers in the municipalities of Ashland and Mansfield, Ohio, and to forego the publication in the newspapers of the notices of the filing of such increased rates and charges as in Section 614-20 of the General Code of Ohio, provided:

And, it appearing that the electric power rates of said company are based upon the cost of coal used; that the cost of fuel now being procured by said company for use in the operation of its generating station has been increased on account of the present restricted production and transportation of such commodity; that the matter of establishing said increased rates and charges for said

service and the waiver of the newspaper notices has been submitted to all the consumers in the said municipalities of Ashland and Mansfield, Ohio, being furnished wholesale power service at primary voltage, and that said consumers have agreed to the immediate establishment of said increased rates and charges and consented to the waiver of said newspaper notices; and, it appearing further that the publication of such notices for three consecutive weeks as provided in said Section 614-20 G. C., would entail unnecessary expense and labor, the Commission is satisfied that said company's application should be granted. It is, therefore,

Ordered, That The Ohio Public Service Company be, and hereby it is authorized to establish and file with the Commission upon one day's notice revised sheet schedules providing the increased rates and charges as agreed upon by and between said The Ohio Public Service Company and its consumers in the cities of Ashland and Mansfield, Ohio, using said wholesale power service at primary voltage, and to forego the publication in the newspapers of the notices of the filing of such revised schedule.

ATTORNEY GENERAL

No Taxes, Assessments or Charges Accruing Subsequent to the Death of the Testator Are to be Deducted From the Estate in the Hands of the Trustees Before the Determination of the Inheritance Tax. Any Costs of Administration or of Trust Imposed by the Law of the State Itself is a Proper Deduction. The Allowance of Trustees' Commissions by the Court and the Cost of Filing the Account Are Both Charges Imposed by Law. Certain Trust Funds and Remainders Created by a Certain Will Held to be too Uncertain for Determination of Inheritance Tax at Present Time.

No. 3373—(Opinion Dated July 21, 1922.).

Tax Commission of Ohio, Columbus, Ohio.

Gentlemen:—The Commission has requested the opinion of this department on the following questions:

“R died testate. By his will he appointed X and J as executors, directing them after payment of debts to transfer and deliver to the trustees under the will the residue of his property and estate.

By item third he gave and devised such residue to X and J, (being the same individuals who are named as executors) and their successors to be held in trust. He further conferred on them full power of management, sale, disposition and re-investment of the different items composing the residuary estate and then proceeds as follows:

“Out of the income realized from the use and management of said property and from all investments and investments made as herein directed, to pay all taxes, assessments and charges upon the property and estate and all expenses of this trust and the management of the estate, including the just and reasonable compensation of said trustees for their services.

I will and direct that said trustees after paying said taxes, assessments and charges and expenses as hereinbefore directed, shall pay over from time to time to C. W. and L, during each of their natural lives and in the order named from the clear net income arising from my said estate a sufficient amount of money as their necessities requires for each of them to live comfortably and have all the necessities of life but not to live extravagantly * * * and in case of the incapacity of either of said parties through sickness or other cause * * * then said trustees shall while such incapacity continues apply such payments to the one so incapacitated * * *.

I further will and direct that if there is any surplus of

income left after providing for C. W. and L, that upon the same terms and conditions as the payments are made to them that if in my said trustees' judgment Mrs. J., my niece, and her son, M, need assistance in their support and the education of the said M, then my said trustees may contribute to them out of said surplus such sum as they may deem just and proper, and their determination as to their necessity and amount to be paid them hereunder is to be final and not reviewable by any court * * *.

This trust shall cease and determine upon the death of C. W and L, unless the said Mrs. J or her son M survive them. if either survive them then said trust shall continue until their death, then this trust is to cease upon their death and in the event of their dying without issue surviving them at their decease I give and bequeath all of said trust estate to the Board of County Commissioners of M County, Ohio, to be held by them as a fund for the purpose of assisting in the erection of a hospital in the village of L but in the event of either of said parties dying leaving issue surviving them then said issue is to take said trust fund share and share alike."

Will you be good enough to advise the Commission as to the following points?

1. What taxes, assessments and charges, if any, are to be deducted from the residuary estate in the hands of the trustees before the determination of inheritance tax?

For your information we may say that we have been advising probate judges when determining inheritance tax on the successions in a trust estate, to make no allowance for taxes to be paid or for trustee's compensation for services rendered in the management of the trust estate, on the theory that such taxes when paid and such services when rendered, inure for the benefit of the beneficiaries of the trust. It would seem, however, as though the testator in the instant case creates a succession only in the net estate and that the items mentioned should be deducted. If you should so hold, on what basis can we arrive at the proper deduction to be made for taxes to be paid during the duration of the trust? The estimated value of the trust fund is \$26,000.00 but it is invested at present largely in non-taxable securities.

2. What 'expenses of this trust and management of the estate, including just and reasonable compensation to said trustees for their services' should be deducted, if any?

It has been estimated that \$150.00 per annum will cover the compensation of the trustees and the cost of filing the accounts required by the statute. Shall we deduct the present value of an annuity of that amount based on the life of M, who is by far the youngest beneficiary?

3. In view of the indefinite nature of the provision made by the will for C, W and L and the amount to be paid to each one by the trustees, how can the value of their successions

be arrived at? It is to be noted that C, the first in order, is in the seven per cent. class while the other two are in the five per cent. class under the inheritance tax law.

4. In view also of the uncertainty as to whether or not there will be any surplus left after providing for C, W and L, so long as they shall live, how can the present value of the successions passing to Mrs. J and her son, M, be computed?"

It is understood that the trust is not one to pay taxes, assessments and charges which have fastened themselves on the property at the death of the testator, and consequently furnish no part of his estate to which succession takes place; but that these charges which the trustees are directed to pay are such as will accrue against the property after the death of the testator, and during the duration of the trust.

In the opinion of this department, the mere fact that the trustees are directed to pay these charges and their reasonable compensation out of the income is immaterial. This is merely a declaration of what the legal result would have been without any such stipulation, for though the trustees would be liable in the first instance for any taxes, assessments and charges upon the property, they would be entitled to reimbursement from the trust funds, and this reimbursement should be taken out of the income. The same is true as to the expense of the management of the estate as to the reasonable compensation of the trustees, this is also chargeable to income.

In short, the trustees are to manage the estate and to pay over the net income from time to time to the persons who constitute the beneficiaries. As the Commission puts it, the expenses are such as are necessary in the management and preservation of the estate and insure to the beneficiaries of the trust. They are only such expenses as the full beneficial owner of the property would be subject to in the management and control of his own estate. Looking to the substance of things and disregarding the form of words used, it is the opinion of this department that the value of the trust fund to which succession takes place should in the first instance be determined without any deduction for future and anticipated expenses of this character. Putting it in another way, the interests of C, W and L, so far as they are ascertainable, are for inheritance tax purposes to be appraised as interests in the income of the entire fund. Obviously, no one else succeeds to the difference between gross income and what the will denotes "net income." The trustees themselves do not take beneficially, and it

is going too far to say that the direction to pay taxes, etc., is in effect an equitable bequest to the public.

The Commission's first question is therefore answered by the statement that no taxes, assessments or charges accruing subsequent to the death of the testator are to be deducted from the estate in the hands of the trustees before the determination of the inheritance tax.

As to the second question, a distinction may be taken. All that has heretofore been said applies to that part of it which relates to miscellaneous expenses of the trust and management of the estate. But a different question arises as to the commissions of the trustees, and the cost of filing the accounts required by the statute. This is because paragraph 6 of section 5332 seems to imply that trustees' compensation is to be deducted. That provision is as follows:

"When a decedent appoints one or more executors or trustees, and instead of their lawful allowance make a bequeath (bequest) or devise of property to them, which would otherwise be liable to such taxes, or appoints them as residuary legatees, and such bequest, devise or residuary legacy exceeds what would be a reasonable compensation for their services, such excess shall be a succession and liable to such tax, and the probate court having jurisdiction of their accounts shall fix such compensation."

Because of the presence of such a provision in the New York statute, it was held in *Matter of Gihon*, 169 N. Y. 443, that the statutory compensation of a trustee of a life interest is a proper deduction. Cullen, J. delivering the opinion of the court recognized the distinction

"that may be made between the commissions of executors or administrators whose appointment is an absolute essential to the lawful liquidation of an estate and those of trustees who are appointed solely for the protection of the property of the beneficiary,"

and conceded that in logic "such latter commission should be considered as an expenditure for his benefit." But his conclusion was that

"whatever force there may be in this view, we think the deduction of the trustees' commissions is justified and required by section 227 of the tax law itself (like the Ohio law above quoted), which prescribes that any legacy or devise to trustees in excess of their commissions allowed by law shall be taxable, thus necessarily implying that legal commissions shall be exempt."

This decision was followed in *Re Silliman*, 80 N. Y. Supp. 336.

In *re Beck's Estate*, 57 N. Y. Supp. 940, which makes the distinction suggested by Judge Cullen in the *Gihon* case, must be regarded as overruled in New York. This distinction was adhered to in *State v. Probate Court*, 101 Minn. 485, though the *Gihon* case and the *Silliman* case were noted. In the *Minnesota* case, however, the deduction disallowed was not the statutory or "reasonable compensation" of the trustees, but a compensation arbitrarily fixed by the will itself. No such circumstances appears in the case submitted by the Commission.

Although no authority has been found on the exact point, it is believed that the inference to be drawn from paragraph 6 of section 5332 of the General Code goes far enough to justify the deduction of the cost of filing the accounts required by the statute. The principle is that any costs of administration or of trust imposed by the law of the state itself is a proper deduction. The allowance of trustees' commissions by the court and the cost of filing the account are both charges imposed by law.

No objection is seen to the procedure suggested by the Commission in its comment on the second question, namely, deducting the present value of an annuity in the amount of \$150.00 which is estimated to cover the expense of the trustees and the cost of filing the account, based on the life of M, the youngest of the beneficiaries.

The third and fourth questions submitted by the Commission are of considerable difficulty. It was evidently the intention of the testator that the trust fund should accumulate for the benefit of the remaindermen to the extent of the surplus, if any, over and above the amount required to satisfy the necessities of C, W. and L, and the amount, if any, contributed by the trustees in their uncontrolled discretion for the support of Mrs. J. and M, and the education of M. Moreover, it seems to be the testator's intention not to measure the respective shares of C, W and L by such amount as would be applied to support each of them respectively without other income, but rather to make such contribution to them as with the income which they are enabled to derive from their own respective efforts will enable them to live "comfortably and have all the necessities of life, but not to live extravagantly." This intention is manifest from the fact that it is further directed that in the event of the incapacity of either of them, the trustees shall during incapacity apply all the payments to the incapacitated one. It is further made apparent by the nature of the stipulation with respect to their discretion in the payment of any surplus

on behalf of Mrs. J and her son M, this being expressly declared to be contingent on the need of "assistance" in their support and the education of M.

From all these considerations it is clear that it cannot be said that the persons named as beneficiaries take a direct beneficial life interest in the corpus of the fund. In other words, it is an annuity of uncertain amount that each of them takes, and not a direct interest.

The nearest case in point is that of *Howe v. Howe*, 179 Mass., 546. In that case the testator directed his executors and trustees to pay over to his sister quarterly during her life out of the residue of his estate "such sums as with the rents and income of her property would give her a net annual income of \$10,000." The court approved an assessment of tax on this interest as an annual amount equal to the difference between the beneficiary's annual income from her own property at the time of the testator's death, and the sum of \$10,000, being \$8,546.80 a year. The court intimated that it might have been proper to value this as an annuity of \$10,000 a year, subject to a reduction by the amount of the net income of any receipts received by the beneficiary from her own property, which not being shown, the value of the annuity might be fixed in the first instance at \$10,000. Inasmuch as it had been fixed by the Probate Court at the smaller sum, however, this was approved.

In this case, however, we have the additional difficulty that the amount of the total income which the testator desires to have C, W and L enjoy respectively is not named as it was in the case just cited, but is measured by their "necessities." Actually, it will be as to each the difference between his income and the amount required for him to live comfortably and have all the necessities of life.

These interests are therefore not annuities in a strict sense, and they cannot be valued by the application of the principles stipulated for in section 5342 of the General Code. In the opinion of this department, it is impossible at the present time to value these successions,—certainly it is not possible without more evidence than is presented in the Commission's letter. The whole succession, both as to the life interests and the remainder is contingent, even if it be assumed that the trustees have not uncontrolled discretion in the amount of the payments which they are directed to make to C, W and L, and even though too the value of

the whole trust fund is so small as to make it extremely likely that the whole net income will be paid out.

In *State ex rel. v. Probate Court*, supra, the court held that no inheritance tax could be assessed until payments of this general character to life beneficiaries were actually made, and directed the lower court to make provision for imposing a tax "upon each installment paid the daughters under the law so as to secure to the state the full and proper rate imposed by the statute."

Whether such a procedure is practicable under the Ohio law this department feels unable to say. Strictly speaking, it seems to be required by section 5336 of the General Code, which provides in part as follows:

"Taxes upon the succession to any estate or property, or interest therein limited, dependent or determinable upon the happening of any contingency or future event, and not vested at the death of the decedent, by reason of which the actual market value thereof cannot be ascertained at the time of such death, as provided in this subdivision of this chapter, shall accrue and become due and payable when the persons or corporations then beneficially entitled thereto shall come into actual possession or enjoyment thereof."

The same section makes trustees liable for all such taxes, etc. and directs them to deduct taxes therefrom or collect the same from the person entitled thereto, and not to deliver any property, the succession to which is subject to tax, to any person until he shall have deducted the taxes thereon. Literally, this would require a determination in the first instance under which the tax would accrue and become due and payable only if and when C, W and L or either of them should receive actual payments in excess of the amount of the exemptions to which they are respectively entitled, which in the case of G would be nothing, and in the case of W and L respectively would be \$500.00. Possibly an arrangement of convenience might be worked out to avoid the detailed administration that would be necessary to carry out such an order.

For like reasons, the Commission's fourth question must be answered by stating that there is no way of arriving at the present value of the succession, if any, passing to Mrs. J. and her son M. Taxation should be postponed until the value becomes certain or calculated. The simple truth is that at the present time there is no way to estimate or calculate the extent of the beneficial interests of the cestuis que trustent. For like reasons (though the Commission does not ask this question), it is impossible at the present time to apply the highest possible rate section to the valuation of the contingent remainders.

SECRETARY OF STATE

NEW CORPORATIONS

The Properties Holding Co., Cleveland, \$500. E. H. Krueger, F. H. Sellberg, R. L. Davis, F. H. Holding Co., Cleveland, \$500. E. H. Krueger, F. H. Sellberg, R. L. Davis, F. H. Pelton, G. A. Robinson.

The Lucasville Oil and Gas Co., Lucasville, \$30,000. T. Hartley, W. L. Reeg, Z. T. Leiston, B. C. Wheeler, K. M. Lockart.

The Torgler Motor Sales Co., Toledo, \$50,000. C. V. Torgler, H. H. Torgler, C. W. Quale, E. H. Ray.

The Lutz-Griffith Co., Toledo, \$50,000. G. P. Lutz, W. E. Griffith, A. J. Carrier, H. S. Yates, F. L. Mulholland.

The Preble Live Stock Co., Eaton, \$3,000. F. Blackford, C. D. Folkerth, E. L. Nienke, Julius Waters, C. F. Laird, W. F. Glander.

The Greenwood Realty Co., Cleveland, \$10,000. J. B. Dworken, H. Freedman, M. Etern, Abe Strauss, A. G. Apple.

The Cleveland Household Supply Co., Cleveland, \$10,000. H. E. Sobul, M. Berrick, E. Soman, Max Kanner, Maud Beattie.

The F. L. Woodworth Co., Athens, \$10,000. F. L. Woodworth, C. L. Woodworth, R. L. Woodworth, G. W. Mason, J. F. Kiener.

The Ryan & Gilfillan Co., Ironton, \$50,000. D. M. Gilfillan, E. E. Gilfillan, N. M. Ryan, I. A. Ryan, Ed. Jeffers.

The Emergency Road Service Co., Cleveland, \$500. W. Eberly, C. A. Hope, J. J. Sloan, H. R. Palmer, C. F. Bateg.

The Fun Book Publishing Co., Belaire, \$20,000. H. L. Albright, C. M. Wyrick, W. B. Starkey, A. J. Sherlock, C. M. Richardson.

The Everybody's Auto Accessory Co., Columbus, \$10,000. L. M. Smith, Joseph W. Rile, G. F. Smith, M. G. Rile, E. G. Smith.

The Crown Rock Asphalt Co., Cincinnati, \$1,000. Charlton Wilder, Wm.

F. Simrose, Ben E. Tate, Herman A. Bayless, Morrison R. Waite.

The Safety Lock Joint Co., Columbus, \$500. W. E. Talhelm, F. E. Fuller, Maurice E. Baker, Henry H. Metcalf, Paula B. Fuller.

The Archbold Electric Service Co., Archbold, \$50,000. Olley C. Lauber, George DeVries, Janetta H. DeVries, Hulda Lauber, William DeVries.

The Felicity Warehouse Co., Felicity, \$10,000. Louis Urbansky, J. C. McKinley, C. H. Woodmansee, J. W. McMurchy, W. A. Miller.

The Heights Baking Co., Cleveland, \$2500. A. W. Haiman, E. M. Goodsmith, D. F. Klein, Lawrence M. Rich, Stella Haiman.

The Conwell Construction Co., Cleveland, \$10,000. Fred E. Cowell, T. A. Ryan, James Male, C. V. Liggett, Thomas C. Moore.

The E. & J. Motor Supply Co., Canton, \$500. A. R. McConnell, Chas. H. Feldbush, A. W. Ellerbrock, F. M. Jamison, Loren E. Souers.

The Finance and Engineering Co., Canton, \$100,000. H. M. Geiger, Griffith Robinson, Jas. E. Kinnison, R. C. Geier, A. E. Uth.

The Roger Williams Co., Cleveland, \$100,000. James H. Griswold, Herbert D. Palmer, John H. Kapp, H. E. Chenoweth, A. M. McNally.

The China Closet Co., Akron, \$10,000. A. D. Slocum, Anna H. Slocum, Irvin J. Slocum, J. H. Slocum, Clara M. Slocum.

The Apperson Ohio Motor Co., Cleveland, \$1250. V. G. Kibby, Chas. M. Knight, F. M. Pritts, F. B. Kavanaugh, T. E. Jarrard.

The Paramount Aircraft Co., Westerville, \$10,000. H. T. Hance, Henry F. Hessler, James O. James, George M. Hunt, Joseph J. Bilski.

The Belleville-Johnsville Light and Power Co., Belleville, \$20,000. J. V. Dye, W. F. Smith, H. L. Bigbee, Ray Buck, L. F. Kochheiser.

The Zane Tire & Supply Co., Zanesville, \$10,000. M. V. Mohn, E. R.

Meyer, Tom O. Crossan, E. J. Downs, W. H. Roberts.

The Clark Knitting Co., Warren, \$5,000. Edward E. Clark, Richard E. Jones, Fred Smith, William Gales, Stepany Dowdell.

The Forney Tailor Co., Cincinnati, \$25,000. Domenico E. Forney, John J. Doyle, Carl A. Forney, John C. McCarthy, Christine A. Strobel.

The Commercial State Bank, Holgate, \$25,000. J. L. Sherman, H. H. Meyer, E. M. Burgel, George Wolf, F. H. Voigt.

The McNary Co., Cleveland, \$10,000. L. W. Wickham, Thos. Stevenson, L. Kachel, E. Kopp, C. D. Reich.

The Electrical Seal Co., Cleveland, \$15,000. Percy H. Paulen, L. W. Wickham, L. Kachel, Thos. Stevenson, C. D. Reich.

The Cropper-Kinney Auto Spring Co., Lebanon, \$50,000. George W. Cropper, L. Simonton, E. J. Beedle, C. E. Lewis, A. B. Kaufman.

The Moorman Furniture Co., Cincinnati, \$10,000. Thomas H. Morrow, J. W. Matthews, Joseph Moorman, Gertrude Guetle, F. C. Busching.

The New Rate Printing Co., Cleveland, \$5,000. Andrew Chuka, Richard M. Collins, H. A. Miner, D. J. Brophy, Howard Blackett, Jr.

The Producers & Consumers Mercantile Co., Canton, \$500. John I. Bahl, J. A. Kress, Charles C. Green, H. W. Foltz, Abraham W. Agler.

The Alliance Woman's Club Co., Alliance, \$10,000. Grace F. Transue, Flora Nash Hazzard, Mary W. Lam-born, Louise Strong.

The Richard Surgeson Co., Toledo, \$10,000. Richard Surgeson, William Surgeson, Frank L. Mulholland, Chas. Hartman, Joseph A. Robaskiewicz.

The Union Properties Co., Cleveland, \$10,000. John E. Palmer, Chas. Rohn, Paul T. Squire, John Morrison, H. F. Stillman.

The Alladin Co., Toledo, \$10,000. M. C. Seeley, H. L. Long, H. F. Badstuber, E. E. Frantz, Geo. E. Laferty.

The Lakewood Motor Sales and Service Co., Lakewood, \$10,000. Wilmer C. Tims, Myron J. Farrell, Chas. J. Swift, Walter S. Bull, F. E. Sherrill.

The Burnwell Coal Co., Bellaire, \$10,000. Andrew Slabe, John Albert, J. L. Kelley, John Rudish, John Ingram.

The Kentucky Lumber Co., Cleveland, \$500. Harold G. Mosier, M. M. Hoyt, D. D. Lawrence, F. A. Buzek, C. W. Whitehair.

The Tool Service Co., Cleveland, \$50,000. John Alden, E. Kenneth Reese, C. F. McGuire, Jr., R. H. Beatty, M. H. Burns.

The Wickliffe Improvement Co., Cleveland, \$35,000. Leona Schwartz, Margaret K. Appleby, E. L. Baker, C. F. Taplin, E. M. Golding.

The Roosevelt Operating Co., Cincinnati, \$50,000. Albert H. Morrill, James G. Stewart, G. A. Ginter, A. Goodman, Jos. A. Keadin.

The Ohio Merchandise Co., Cleveland, \$10,000. Mollie Friedman, Jane A. Anderson, Wallace O. Anderson, William Sheinkman, M. Sheinkman.

The Toledo Aluminum and Bronze Casting Co., Toledo, \$10,000. Chas. M. Kistner, Otto K. Rudon, William F. Erler, Fred H. Schill, Albert C. Mittendorf.

The Cleveland Collateral Co., Beechwood, \$500. D. R. Wilkin, C. A. Alexander, Quay H. Findley, I. M. McDonough, R. L. Haverick.

The East End Sand and Gravel Co., Chillicothe, \$25,000. C. C. Gettles, E. F. Bearce, Bessie W. Gettles, J. P. Price, Mary Bearce, Mrs. Minnie Price.

The Powerlite Co., Lakewood, \$500. H. N. Anderson, D. S. Anderson, C. J. Dorzil, Wm. E. Miller, Chas. Barker.

The States Rubber Holding Co., Cleveland, \$100,000. F. H. Kelsey, Sam DeGraw, B. L. Kelsey, C. A. Hope, Lucille A. Pickering.

The Colonial Building Co., Toledo, \$5,000. Rose E. Mullen, Leet J. Deibel, Geo. H. Lewis, Wilfred G. Christensen, Claude R. Banker.

The Burens Heating & Ventilating Co., Cleveland, \$5,000. Edward F. Burens, John G. Romanoff, George Nesheff, P. N. Mitchoff, L. H. Wolfe.

The Banner Vinegar Co., Cincinnati, \$25,000. B. H. Herbes, J. W. Matthews, C. M. Skillman, F. C. Busching, Gertrude Guetle.

The Independent Dry Cleaners Tailors and Dyers Co., Toledo, \$15,000. Jacob J. Rosen, Harry Rosen, William G. Neher, David Lenovit, Andrew Gallegher.

The Scottish Rite Realty Co., Toledo, \$500. John H. Lloyd, William T. S. O'Hara, G. W. Dennison, W. S. Thurstin, Jr., Thos. B. Guitteau.

The Toledo Theatres & Realty Co., Toledo, \$500. Newton A. Tracy, L. B. Tucker, Frank M. Coburn, Walter R. Tonkin, Harry B. Bugbee.

The Moran Construction Co., Akron, \$25,000. M. F. Neal, R. H. Nesbitt, G. M. Neal, Wendell L. Willkie, G. L. Keller.

The McClaren Products Co., Dayton, \$500. Walter McLaren, C. J. Miller, Edward E. Burkhardt, W. A. Kreidler, F. R. Flory.

The Lincoln Park Land Co., Niles, \$15,000. R. L. McCorkle, H. T. Calvin, Carl B. Rettig, Thomas H. Maden, W. F. MacQuean.

The Interlaken Hotel Co., Put-in-Bay, \$500. Webster P. Huntington, Charles N. Weis, S. M. Johannsen, Sidney Frohman, G. A. Boeckling.

The Lake Lithograph Co., Cleveland, \$15,000. H. L. Moore, Geo. H. Hird, J. E. Ferguson, W. R. Codfrey, John A. Boylan.

The Snider-Gordon Co., Cleveland, \$10,000. V. Gleasner, J. H. Orgill,

C. E. Mellen, L. W. Wickham, C. L. Sheil.

The Gotham Shop Co., Cincinnati, \$50,000. Guy B. Roush, J. W. Brumbaugh, F. M. Roush, Walter H. Overbeck, Harry F. Freking.

The West Side Hospital & Clinic Co., Dayton, \$10,000. A. V. Weinberger, C. R. Wheelock, Neil Stire, A. W. Schulman, Elizabeth Roeichan.

The John F. Class Health Fund Co., Dayton, \$10,000. John F. Class, Wallmore B. Turner, Helen L. Kroger, Granville Class, Charles LaFollette.

The Brown-Reynolds Co., Cleveland, \$10,000. Ralph W. Edwards, W. E. Callahan, Agnes Kent Strong, R. A. Gillis, Corinne Alehouse.

The Bowerston Clay Products Co., Bowerston, \$250,000. J. C. Lyons, S. B. Beer, G. H. Johnston, J. N. Dunlap, Robert Maxwell.

The Spahn Co., Niles, \$50,000. Josephine A. Spahn, Thomas Spahn, Sally D. Spahn, Leo Spahn, Theresa Spahn.

The Dayton Country Club Co., Van Buren Twp., \$5000. Robert R. Dickey, Daniel W. Allaman, R. T. Houk, Jr., Henry S. Mead, Joseph Bradford, Coolidge.

Increase

The Ohio Somerset Oil Co., Cleveland, from \$50,000 to \$60,000.

PUBLIC UTILITIES COMMISSION

Advanced Utility Rate Proceeding No. 81.—In the Matter of the Proposed Increased Rates and Charges of The Wildwood Service Company for Water Service in Adams Township, Lucas County, Ohio, Filed to Become Effective March 1, 1922.

(Dated August 3, 1922.)

The Commission having heretofore, upon the complaint of The Wildwood Civic Association, suspended the use and operation of the rates and charges for water service set forth in the proposed schedule, designated P. U. C. O. No. 1, published and filed to become effective March first, 1922, by The Wildwood Service Company, and entered upon an investigation concerning the propriety of such rates and charges, which rates and charges thereafter were imposed and collected by said respondent by virtue of its undertaking duly filed herein.

This day, after full hearing, due notice of the time and place of which was given to all parties in interest, said matter came on for final consideration upon the pleadings, the evidence and exhibits offered at said hearing, and the Commission's independent investigation of the respondent's property and books.

The Commission, being fully advised in the premises, and having heretofore ascertained and determined, pursuant to the law in such cases made and provided, the reproduction and present values of respondent's property, used and useful for the convenience of the public in the furnishing of water service in Adams township, Lucas county, Ohio, as of March first, 1922, to be, respectively, the sums of \$20,383.92 and \$18,694.72, finds:

That the probable operating revenues of said respondent in said territory for one year, based upon the rates and charges provided in said P. U. C. O. No. 1, will amount to the sum of \$2,857.86;

That the reasonable operating expenses for one year would amount to the sum of \$1,195.62, leaving a balance for depreciation, interest and dividend charges of \$1,662.24;

That a reasonable annual charge for depreciation upon said property is the sum of \$258.39, and

That, after setting aside the above amount for depreciation, there would then be the amount of \$1,403.85 for interest and dividend charges, which said amount is seven and six-tenths, plus, percentum of the present value of said property.

The Commission further finds that said return of seven and six-tenths plus percentum is not unreasonable and that, therefore, the charges provided in said proposed schedule, which have been imposed and collected by respondent by virtue of its said undertaking, duly filed herein, are not unreasonable, unjust, excessive or discriminatory. It is, therefore,

Ordered, That the order, heretofore made and entered herein, in so far as the same suspends the going into effect of said respondent's said proposed schedule, be, and hereby the same is rescinded and revoked, and that the complaint, heretofore filed herein, be, and hereby the same is dismissed.

✽

No. 2102—In the Matter of the Application of The Baltimore and Ohio Railroad Company for an Order Authorizing it to Issue and Sell or Pledge \$10,000,000 of its Refunding and General Mortgage Bonds, Series B. Third Supplemental Order.

(Dated July 28, 1922.)

The Commission having heretofore, by its order, first supplemental order and second supplemental order, made and entered herein as of dates, February fourth, 1921; April nineteenth, 1921, and July twenty-first, 1921, respectively, consented to and authorized the issue and disposition by said The Baltimore and Ohio Railroad Company of refunding and general mortgage bonds of the principal sums of \$905,000, \$2,782,000 and \$1,624,000, and retained jurisdiction of this proceeding for the specific purpose of thereafter consenting to and authorizing the issue and disposition of additional bonds, when and as such issue and disposition shall be authorized by the Interstate Commerce Commission:

Comes now said The Baltimore and Ohio Railroad Company and, by its third supplemental application filed herein and a copy of the finding and order, dated May twentieth, 1922, of the Interstate Commerce Commission, represents and shows to the satisfaction of the Commission that, within the period May first, 1921, to December thirty-first, 1921, inclusive, it expended from its treasury for the construction, completion, extension and improvement of its facilities and other capital purposes, the sum of \$1,840,105.38, none of which was obtained or procured by the issue of stock, bonds, notes or other evidences of indebtedness which, added to the amount of \$2,730.67 carried over from previous certificate for

which no bonds were authorized, makes an aggregate of \$1,842,836.05 uncapitalized, capital expenditures as of January first, 1922; that of such expenditures, the sum of \$275,597.34 were made upon applicant's lines and facilities within the State of Ohio; that the issue of its refunding and general mortgage, six per cent Series B, bonds of the principal sum of \$1,840,000 on account of such uncapitalized, capital expenditures has been duly authorized by the Interstate Commerce Commission in its said order in Finance Docket No. 2325, and asks the consent and authority of this Commission to issue and dispose of such additional bonds of said issue.

Upon consideration whereof, and being fully advised in the premises and it appearing from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, the Commission finds:

That, at this time, the issue of applicant's said bonds of the principal sum of \$275,000.00, and the money to be procured thereby, are reasonably required and necessary to reimburse The Baltimore and Ohio Railroad Company for expenditures (not heretofore capitalized) made upon its lines and property in the State of Ohio within the five years next preceding the date of the filing of the application herein, and

That, insofar as this Commission has the authority so to find, the issue of applicant's said bonds of the principal sum of \$1,840,000.00, and the money to be procured thereby, are reasonably required and necessary for the reimbursement of the applicant's treasury for expenditures (not heretofore capitalized) made upon the railroads and properties subject to the mortgage securing said mortgage, within the five years next preceding the date of the filing of the application herein,

and is satisfied that, in so far as it has authority so to do, its consent and authority for the disposition thereof should be granted. It is, therefore,

Ordered, That, in so far as this Commission has the authority so to do, said The Baltimore and Ohio Railroad Company be, and hereby it is authorized, in addition to the bonds authorized by the orders made and entered herein as of dates February fourth, 1921; April nineteenth, 1921, and July twenty-first, 1921, to issue one million, eight hundred and forty thousand dollars (\$1,840,000), principal sum, of its refunding and general mortgage bonds, secured by its refunding and general mortgage, dated December 1, 1915; said bonds to be issued as a part of Series B; the coupon

bonds to be dated February first, 1919; to mature December 1, 1995; to bear interest at the rate of six per centum (6%) per annum, payable semi-annually, on February first and August first of each year, and to be redeemable on or after June first, 1925, at a premium of five per centum (5%); such bonds to include a principal sum of two hundred and seventy-five thousand dollars (\$275,000), for which the consent and authority of this Commission hereby is specifically granted said The Baltimore and Ohio Railroad Company, as hereinabove found and determined to be reasonably required and necessary. It is further

Ordered, That said refunding and general mortgage bonds, Series B, shall be sold for the highest price obtainable, but for not less than eighty (80) per centum of the principal amount thereof, and, pending such sale, may be pledged as collateral security for loans, which shall be the greatest sums negotiable, but not less than sixty (60) per centum of the principal amount of the bonds so pledged. It is further

Ordered, That any discount arising from the sale of said bonds for less than the principal sum thereof be amortized pursuant to the rules and regulations heretofore prescribed by this Commission. It is further

Ordered, That the company make verified reports to this Commission of the issue and disposition of its bonds pursuant to the terms and conditions of this order. It is further

Ordered, That this order shall take effect immediately. It is further

Ordered, That jurisdiction of this proceeding be retained for the specific purpose of hereafter consenting to and authorizing the issue and disposition of additional principal sums of applicant's said bonds when and as such issue and disposition shall be authorized by the Interstate Commerce Commission.



No. 2262—In the Matter of the Complaint of The North Western Ohio Light Company Against an Ordinance Passed by the Village of Leipsic, Ohio, and the Appeal Therefrom by Said The North Western Ohio Light Company.

(Dated July 17, 1922.)

This matter coming on this day for further consideration upon the complaint, by The North Western Ohio Light Company, of and appeal from the ordinance passed by the municipal council of

the village of Leipsic, Ohio, on the twenty-second day of February, 1921, fixing the rates for electrical service in said village for a term of ten years from and after the first day of April, 1921.

And the Commission, coming now to value the property of said The North Western Ohio Light Company, used and useful for the convenience of the public in the furnishing of electrical service in the Village of Leipsic, Ohio, and after considering the inventory of its said property filed herein by said applicant, the evidence and exhibits, and having completed an inventory and valuation of said property, and being fully advised in the premises:

The Commission finds and ascertains the value of the several classes and kinds of property of said The North Western Ohio Light Company used and useful for the convenience of the public in the furnishing of electrical service in the village of Leipsic, Ohio, and of said property as a whole, as of April first, 1921, with the unit prices thereof the fair prices for the period of five years next preceding said date certain, to be as set forth in the following summary, viz:

Description	Reproduction Cost	Total Depreciation	Present Value
Power plant building	\$ 8,282.02	\$ 828.21	\$ 7,453.81
Power plant and equipment	37,936.10	17,673.49	20,262.61
Power plant piping	3,533.87	687.49	2,846.38
Distribution system	15,322.40	1,397.27	13,925.13
Transformers	3,903.50	730.70	3,122.80
Meters	6,330.45	1,266.09	5,064.36
Testing instruments	74.47	31.60	42.87
Power house tools	515.70	242.07	273.63
Furniture and fixtures	608.21	121.24	486.97
Subtotal	\$76,506.72	\$23,028.16	\$53,478.56
Overhead and Intangibles:			
Omissions, 2 per cent.	\$ 1,530.13	\$ 560.56	\$ 1,069.57
Preliminary and organiza- tion expenses	2,800.00		2,800.00
Taxes, 1½ per cent. for six months	585.28		585.28
Subtotal	\$81,422.13	\$23,488.72	\$57,933.41
Interest, 6 per cent. for six months	2,442.66		2,442.66
Materials and supplies	1,912.39		1,912.39
Working capital	3,668.64		3,668.64
Total physical prop'ty	\$89,445.82	\$23,488.72	\$65,957.10

It is, therefore,

Ordered, That notice of such valuation so placed upon said property be transmitted by registered letter to said The North Western Ohio Light Company and to the Mayor of Leipsic, Ohio; all as provided for under Section 499-12 of the General Code of Ohio. It is further

Ordered, That all inventories, valuations, transcripts and exhibits be filed and considered as a part of the record herein. It is further

Ordered, That the Commission reserve the right, in the event it shall determine the aforesaid inventory to be incomplete and inaccurate, or that said valuation is incorrect, to make such changes therein as may be necessary before said tentative valuation shall become final.

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No. 2263—In the Matter of the Complaint of The North Western Ohio Light Company Against an Ordinance Passed by the Village of West Leipsic, Ohio, and the Appeal Therefrom by Said The North Western Ohio Light Company. Rates Taxed.

(Dated July 17, 1922.)

This matter coming on this day for further consideration upon the complaint, by The North Western Ohio Light Company, of and appeal from the ordinance passed by the municipal council of the village of West Leipsic, Ohio, on the twenty-third day of February, 1921, fixing the rates for electrical service in said village for a term of ten years from and after the first day of April, 1921.

And the Commission, coming now to value the property of said The North Western Ohio Light Company, used and useful for the convenience of the public in the furnishing of electrical service in the Village of West Leipsic, Ohio, and after considering the inventory of its said property filed herein by said appellant, the evidence and exhibits, and having completed an inventory and valuation of said property, and being fully advised in the premises:

The Commission finds and ascertains the value of the several classes and kinds of property of said The North Western Ohio Light Company used and useful for the convenience of the public in the furnishing of electrical service in the village of West Leipsic, Ohio, and of said property as a whole, as of April first, 1921, with

the unit prices thereof the fair prices for the period of five years next preceding said date certain, to be as set forth in the following summary, viz:

Description	Reproduction Cost	Total Depreciation	Present Value
Power plant building	\$ 271.13	\$ 27.11	\$ 244.02
Power plant equipment	1,241.94	578.59	663.35
Power plant piping	115.69	22.51	93.18
Distribution system	2,266.65	271.68	1,894.47
Transformers	502.80	98.79	404.01
Meters	433.96	90.79	363.17
Testing instruments	5.99	2.54	3.45
Power house tools	16.88	7.92	8.96
Furniture and fixtures	25.21	5.03	20.18
Subtotal	\$ 4,899.65	\$ 1,104.86	\$ 3,794.79
Overhead and Intangibles:			
Omissions, 2 per cent.	\$ 97.99	\$ 22.10	\$ 75.89
Preliminary and organiza- tion expenses	200.00		200.00
Taxes, 1½ per cent. for six months	37.48		37.48
Subtotal	\$ 5,235.12	\$ 1,126.96	\$ 4,108.16
Interest, 6 per cent. for six months	\$ 157.05		\$ 157.05
Working capital	235.00		235.00
Materials and supplies	62.61		62.61
Total physical prop'ty..	\$ 5,689.78	\$ 1,126.96	\$ 4,562.82

It is, therefore,

Ordered, That notice of such valuation so placed upon said property be transmitted by registered letter to said The North Western Ohio Light Company and to the Mayor of West Leipsic, Ohio; all as provided for under Section 499-12 of the General Code of Ohio. It is further

Ordered, That all inventories, valuations, transcripts and exhibits be filed and considered as a part of the record herein. It is further

Ordered, That the Commission reserve the right, in the event it shall determine the aforesaid inventory to be incomplete and inaccurate, or that said valuation is incorrect, to make such changes therein as may be necessary before said tentative valuation shall become final.

No. 2590—In the Matter of the Application of The North Eastern Oil and Gas Company for Consent and Authority to Abandon Natural Gas Pressure Transportation Line from Markham Station in Austinburg Township, Ashtabula County, Ohio, in and Through Said Township of Austinburg, the Township of Jefferson and the Township of Plymouth to a Point in Plymouth Township, Where the New Proposed Conneaut Line Connects with Said Present Existing High Pressure Transportation Line from Markham Station to Conneaut, Together with the Consent and Authority to Abandon Service to All Consumers On and Along that Part of Said Line So to Be Abandoned and Authority to Relocate, Construct and Maintain a High Pressure Transportation Line from the Ashtabula Line to the Said Conneaut Line in Plymouth Township. Prayer Granted.

(Dated July 24, 1922.)

This day, after due notice, by publication and otherwise, as required by law, this matter came on to be heard, and was heard upon the application of The North Eastern Oil and Gas Company for the consent and authority of this Commission to abandon its present natural gas pressure transportation line from Markham Station in Austinburg township, Ashtabula county, Ohio, in and through said township and the townships of Jefferson and Plymouth to a point in Plymouth township, where the applicant's proposed new Conneaut line connects with its present high pressure line from Markham Station to Conneaut, Ohio, and to discontinue its service to some twelve consumers now receiving service from said line, herein sought to be abandoned; and the evidence offered at said hearing.

The Commission, being fully advised in the premises, finds that said line has been in operation for more than five years, and, having due regard for the welfare of the public and the cost of maintaining and operating said present high pressure line, further finds that said proposed abandonment of said line is reasonable and is satisfied that, upon the completion of applicant's proposed new high pressure line for the transportation of natural gas from Markham Station to Conneaut, consent and authority for the abandonment of said present transportation line should be granted. It is, therefore,

Ordered, That, upon the completion of its new high pressure natural gas transportation line from Markham Station to Conneaut,

Ashtabula county, Ohio, said The North Eastern Oil and Gas Company be, and hereby it is authorized to abandon its present transmission line from Markham Station in Austinburg township, Ashtabula county, Ohio, in and through said township and the townships of Jefferson and Plymouth, to the point in Plymouth township where the proposed new line connects with said present existing line from Markham Station to Conneaut, Ohio, and to discontinue the furnishing of natural gas service to the consumers now furnished service from said line herein authorized to be abandoned.

3

No. 2605—In the Matter of the Joint Application of The Cadiz Electric Light and Power Company, a Corporation, for Authority to Sell, and The Ohio Service Company, a Corporation, for Authority to Purchase the Machinery, Plant and Equipment of The Cadiz Electric Light and Power Company. Prayer Granted.

(Dated July 31, 1922.)

This day, it appearing to the Commission from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, this matter came on for consideration upon the joint application of The Cadiz Electric Light and Power Company and The Ohio Service Company, corporations duly organized and existing under and by virtue of the laws of the State of Ohio, asking the consent to and approval, by this Commission, of the sale, by said first named applicant, and the purchase, by the latter, of all the property, rights, business and other assets of said The Cadiz Electric Light and Power Company.

The Commission, being fully advised in the premises, finds from the pleadings and exhibits filed herein and its independent inquiry and investigation thereupon:

That, for purchase and sale purposes, the value of the property, business and other assets of The Cadiz Electric Light and Power Company is not less than the sum of \$20,000.00, and

That the public will, upon such sale and purchase of said property, be furnished adequate service for a reasonable and just rate, rental, toll or charge therefor,

and is satisfied that consent and authority for such sale and purchase of said property should be granted. It is, therefore,

Ordered, That said The Cadiz Electric Light and Power Company be, and hereby it is authorized to sell all of its property, rights, business and other assets to The Ohio Service Company; and said The Ohio Service Company hereby is authorized to purchase and acquire the same, and to pay therefor the agreed consideration of twenty thousand dollars. It is further

Ordered, That, forthwith upon the exercise of the authority herein granted, said parties file with this Commission, schedules providing for their respective withdrawal from and inauguration of service within the territory now served by means of said property. It is further

Ordered, That nothing herein shall be construed to be a consent to or approval, by this Commission, of any increase in rates or diminution of service within the territory now served by means of said property, nor shall the findings hereinbefore set forth as to the value of said property, rates and service, or the acquiescence in the passing of said agreed consideration, be binding upon this Commission in any future proceeding involving rates and/or service.



No. 2588—In the Matter of the Joint Application of The Sugarcreek Light and Power Company, a Corporation, for Authority to Sell, and The Ohio Service Company, a Corporation, for Authority to Purchase the Machinery, Plant and Equipment of The Sugarcreek Light and Power Company, of Sugarcreek, Tuscarawas County, Ohio. Prayer Granted.

(Dated July 31, 1922.)

This day, it appearing to the Commission from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, this matter came on for consideration upon the joint application of The Sugarcreek Light and Power Company and The Ohio Service Company, corporations duly organized and existing under and by virtue of the laws of the State of Ohio, asking the consent to and approval, by this Commission, of the sale, by said first named applicant, and the purchase, by the latter, of all the property, rights, business and other assets of said The Sugarcreek Light and Power Company.

The Commission, being fully advised in the premises, finds from

the pleadings and exhibits filed herein and its independent inquiry and investigation thereupon:

That, for purchase and sale purposes, the value of the property, business and other assets of The Sugarcreek Light and Power Company is not less than the sum of \$28,000.00, and

That the public will, upon such sale and purchase of said property, be furnished adequate service for a reasonable and just rate, rental, toll or charge therefor,

and is satisfied that consent and authority for such sale and purchase of said property should be granted. It is, therefore,

Ordered, That said The Sugarcreek Light and Power Company be, and hereby it is authorized to sell all of its property, rights, business and other assets to The Ohio Service Company; and said The Ohio Service Company hereby is authorized to purchase and acquire the same, and to pay therefor the agreed consideration of twenty-eight thousand dollars. It is further

Ordered, That, forthwith upon the exercise of the authority herein granted, said parties file with this Commission, schedules providing for their respective withdrawals from and inauguration of service within the territory now served by means of said property. It is further

Ordered, That nothing herein shall be construed to be a consent to or approval, by this Commission, of any increase in rates or diminution of service within the territory now served by means of said property, nor shall the findings hereinbefore set forth as to the value of said property, rates and service, or the acquiescence in the passing of said agreed consideration, be binding upon this Commission in any future proceeding involving rates and/or service.

ATTORNEY GENERAL

Land Sold in Foreclosure Proceedings for the Enforcement of the Lien for Delinquent Taxes and Penalties Under Sections 5719 and 5619 of the General Code May be Offered for Sale for What it Will Bring Without Any Appraisalment and Without any Exemptions. The Tariff is Authorized to Accept Any Bid That is Made, Though the Amount Thereof May not be Sufficient to Pay the Judgment for Taxes, Penalties and Interest and the Costs of the Proceeding. Whether the Court May Set Aside or Refuse to Confirm a Sale Under These Circumstances is not Decided.— If in Such Proceedings a Sale is Made or Confirmed for an Amount Insufficient to Pay the Costs and the Judgment for Taxes, Penalties and Interest, the Costs Constitute the First Charge Against the Fund, After Which the Balance is to be Applied on the Claim for Taxes, Penalties and Interest. Whether Such Proceedings Discharge the State's Claim for Taxes, Penalties and Interest, or Whether a Personal Liability Still Exists for the Balance, and if so, How it May be Enforced, Are Questions Which Are Not Decided.

No. 3374—(Opinion Dated July 21, 1922.)

Hon. Lawrence H. Webber, Prosecuting Attorney, Elyria, Ohio.

Dear Sir:—You have requested the opinion of this department on the following questions:

“What constitutes a legal bid for land sold for delinquent taxes under section 5719 of the General Code?

Two-thirds of the appraised value of course is the least the sheriff can sell land on execution. Section 5718 provides that the sheriff shall sell this land ‘in the manner provided by law for the sale of real estate on execution.’ As section 5719 provides that there shall be no appraisalment, what is the least amount the sheriff can accept when this land is put up for public sale?”

Section 5718 of the General Code provides that the prayer of the petition in a suit brought to foreclose the lien of the state under an unredeemed land tax certificate shall in part be “that the court make an order that said property be sold by the sheriff of of the county in the manner provided by law for the sale of real estate on execution.”

Section 5719 of the General Code provides in part as follows:

“Judgment shall be rendered for such taxes and assess-

ments, or any part thereof, as are found due and unpaid, and for penalty, interest and costs, for the payment of which, the court shall order such premises to be sold without appraisal. From the proceeds of the sale the costs shall be first paid, next the judgment for taxes, assessments, penalties and interest and the balance shall be distributed according to law. The owner or owners of such property shall not be entitled to any exemption against such judgment, nor shall any statute of limitations apply to such action." * * *

The following sections relate to the sale of real estate on execution:

"Sec. 11664. * * * If the court rendering the judgment or decree so orders, real estate may be sold under execution as follows: one-third cash on the day of sale, one-third in one year, one-third in two years thereafter, with interest in deferred payments, to be secured by mortgage on the premises so sold. * * * The exact amount of the debt, damages and costs, for which the judgment is entered, shall be indorsed on the execution."

Sec. 11672. When execution is levied upon lands and tenements, the officer who makes the levy shall call an inquest of three disinterested freeholders, residents of the county where the lands taken in execution are situated, and administer to them an oath impartially to appraise the property so levied upon, upon actual view. They forthwith shall return to such officer, under their hands, an estimate of the real value of the property in money."

"Sec. 11673. When the officer receives such return he forthwith shall deposit a copy of it with the clerk of the court from which the writ issued, and immediately advertise and sell such real estate, agreeably to the provisions of this chapter."

"Sec. 11675. No tract of land shall be sold for less than two-thirds of the value returned in the inquest; except that in all cases where a junior mortgage or other junior lien is sought to be enforced against real estate by an order, judgment or decree of court, subject to a prior lien or liens thereon, and such prior lien or liens, and the claims or obligations secured thereby, are unaffected by such order, judgment or decree, the court making such order, judgment or decree, may determine the minimum amount for which such real estate may be sold, such minimum amount, however, to be not less than two-thirds of the difference between the value of the real estate appraised as provided in section eleven thousand, six hundred and seventy-two, and the amount remaining unpaid on the claims or obligations secured by such prior lien or liens."

Section 11677 makes the following significant provision:

"Nothing in the foregoing provisions shall affect the

sale of lands by the state. All lands, the property of individuals, indebted to the state for debts, taxes, or in any other manner, except for loans heretofore authorized by the legislature, shall be sold without valuation, for the discharge of such debt or taxes, agreeably to the laws in such cases made and provided."

"Sec. 11661. Lands and tenements taken in execution shall not be sold until the officer causes public notice to be given of the time and place of sale, for at least thirty days before the day of sale, by advertisement in a newspaper printed and of general circulation in the county."

"Sec. 11696. Sales of lands or tenements under execution or order of sale must be held in the county in which they are situated and at the court house, unless otherwise ordered by the court. Purchase of real or personal property, by the officer making the sale thereof, or by an appraiser of such property, shall be fraudulent and void."

Section 11730 of the General Code need not be quoted in full. It provides for a homestead exemption in certain cases and is followed by other provisions of the same character providing for allowance in lieu of homestead. By virtue of sections 5718 and 5719 read together, it becomes apparent that while the property against which the lien is to be foreclosed is to be sold generally in the manner provided by law for the sale of real estate on execution, all the provisions relating to the sale of real estate on execution are not to apply, for there is to be no appraisement, nor are there to be any exemptions. So far as the appraisement is concerned, it would seem that the provisions of section 11677 would themselves negative the necessity for any such procedure. It is very clear, however, both from the sections dealing with the special action themselves and from the sections dealing generally with sales of real estate on execution, that in cases under sections 5718 and 5719 of the General Code there is to be no appraisement.

No statutory provision has been found imposing any limitation whatsoever upon the amount that the sheriff may accept when land is put up for public sale under sections 5718 and 5719, for section 11675 imposes a limitation based upon the appraised value, and does not authorize the court to determine the minimum amount for which real estate may be sold, except when the same is to be subject to prior liens unaffected by the judgment, and even then the limitation to be fixed by the court is to be in part based upon the appraised value.

So far as the sheriff is concerned then, he is authorized to accept any amount that is bid. Whether the court on the return of

the execution and motion for confirmation or otherwise, may set aside a sale or refuse to confirm it because of the insufficiency of the bid, is a question which you do not ask, and which is therefore reserved for further consideration, but the sections bearing upon the same have been quoted herein.

In order to cover other questions which have come to this department, it may also be stated that in the event the land does not sell at public auction for the full amount of delinquent taxes, penalties and interest and the sale is confirmed, section 5719 seems to contain full provision for such a case when it prescribes that the costs shall be first paid and next the judgment for taxes, penalties and interest. In other words, the costs constitute the first charge against the fund derived from the sale of the land. The balance of the fund in such a case would be applied on the claim for taxes, penalties and interest. Whether a claim for taxes, penalties and interest to the extent that it is unsatisfied by the sale, still subsists as a personal obligation of the taxpayer; against whom it subsides if at all; and whether any personal judgment can be entered in a case brought under section 5718 for the deficiency, if any, or execution awarded upon the finding of the amount due after failure to satisfy from the sale of the real estate, are questions which are not presented in any of the communications which have come to this department, and which are reserved for future consideration.

The points to which this opinion is limited are as follows:

(1) Land sold in foreclosure proceedings for the enforcement of the lien for delinquent taxes and penalties under sections 5719 and 5819 of the General Code may be offered for sale for what it will bring without any appraisement and without any exemptions. The sheriff is authorized to accept any bid that is made, though the amount thereof may not be sufficient to pay the judgment for taxes, penalties and interest and the costs of the proceeding. Whether the court may set aside or refuse to confirm a sale under these circumstances is not decided.

(2) If in such proceedings a sale is made or confirmed for an amount insufficient to pay the costs and the judgment for taxes, penalties and interest, the costs constitute the first charge against the fund, after which the balance is to be applied on the claim for taxes, penalties and interest. Whether such proceedings discharge the state's claim for taxes, penalties and interest, or whether a personal liability still exists for the balance, and if so, how it may be enforced, are questions which are not decided.

Bonds, the Issuance of Which Had Been Fully Provided for by Legislation Completely Effective Prior to January 1, 1922, May Now be Sold and Delivered, Though the Maturities do not Conform to the Provisions of Section 2295-12, General Code. Opinions Nos. 2923 and 3021 Modified. Opinion No. 3302 Modified to this Extent:—The Phrase “Bonds to be Retired by Means of a Sinking Fund” Found in Section 2295-14, General Code; And “Heretofore Issued” Found in Sections 2976-26, 4513 and 5649-1, General Code, as Amended in the Griswold Act, Both Refer to Bonds Authorized by Legislation or Other Proceedings of the Bond Issuing Authority Fully Effective Prior to January 1, 1922; and the Phrase “Serial Bonds” Employed in Sections 7614 and 5649-1, General Code, is to be Taken as Referring to Bonds, the Legislation or Other Similar Proceedings for the Authorization of Which was not Completed Until After January 1, 1922. The Other Conclusions in the Said Opinion so Far as Dependent upon this Modification, are to be Regarded as Similarly Modified.

No. 3371—(Opinion Dated July 21, 1922.)

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

Gentlemen:—The recent decision of the Supreme Court in the case of State of Ohio ex rel. Johnson v. Chandler, decided July 5, 1922, makes it necessary for this department to modify Opinions Nos. 2923 and 3031, wherein it was held that the provisions of Section 14 of the so-called Griswold Act, Section 2295-12 of the General Code, must be complied with in all cases in which the issuance of bonds has been fully authorized by complete legislation prior to January 1, 1922, but the bonds so authorized have not been in whole or in part disposed of nor binding contracts made for their disposition prior to that date.

The same decision makes it necessary to modify Opinion No. 3302, in which it was held that the term “bonds to be retired by means of a sinking fund”, as used in Section 20 of the Griswold Act, Section 2295-14 of the General Code, should be in practice taken to mean all bonds issued prior to January 1, 1922.

It is true that the case mentioned does not deal specifically with the problems involved in any of these opinions. The exact question considered in that case was as to the application of Section 6 of the Griswold Act, Section 2295-9 of the General Code, to bonds, the legislation for which was complete prior to January 1, 1922, but which were not sold until after that date, in whole or in

part. The court held in effect that this section which regulates the length of maturities has no application to the particular issue thus described.

It is true that by a refinement of reasoning, a distinction can be drawn between the case cited and the questions considered by this department in the opinions referred to, but it is not believed that it was the intention of the General Assembly that any one issue of bonds should be subject to some of the provisions of the Griswold Act and not subject to others. On the contrary, it is believed that a fair and workable interpretation of the whole act would require us to conceive of two classes of bonds, those to which the act as a whole applies, and those to which it does not apply; and more particularly those, the proceedings with respect to which, both as regards issuance and as regards retirement, are to be had under the scheme of things existing prior to the effective date of the Griswold Act, and those with respect to which similar proceedings are to be fully regulated by the Griswold Act itself.

Proceeding on this broad principle then, it is believed that the decision in the case cited makes it necessary for this department to recede from the position which it has heretofore taken with respect to the application of section 2295-12 of the General Code, and to hold in the particular cases arising in the city of Elyria which evoked the first two opinions above mentioned, that in both of these cases the bonds, the issuance of which had been fully provided for by legislation completely effective prior to January 1, 1922, may now be sold and delivered, though the maturities do not conform to the provisions of section 2295-12 of the General Code.

This conclusion is reached with a greater confidence because though section 2295-12 of the General Code was not directly before the court in the case cited, some comment is found in the opinion of the court relative to this section and its character is consistent with the conclusions now reached.

The conclusion that the third of the opinions above referred to must also be modified is not quite so obvious, as the court in its opinion in the case cited did not consider this question either directly or indirectly. However, as brought out in the said opinion of this department now under discussion, the test for determining whether a bond is to be regarded as a serial bond within the meaning of various expressions of this character found in the Griswold Act, or on the other hand, as a bond to be retired by means of a 'sinking fund' within the meaning of section 2295-14 of the General Code and other similar expressions found elsewhere in the

Griswold Act, is furnished by determining whether sections 14 and 15 of the Griswold Act, being sections 2295-12 and 5649-1b of the General Code, were complied with in the issuance of the bonds in question. In other words, if the bonds are issued in strict conformity with section 2295-12 of the General Code, and if the necessary tax levies to provide for the payment of interest and the retirement of the bonds, are those which the county auditor, acting under section 5649-1b of the General Code, is to compute, then the bonds are serial, and are not to be retired by means of a "sinking fund"; but if section 2295-12 was not complied with in their issuance, and if the debt service levies are to be made from year to year, not by the county auditor as a ministerial officer, but by the ordinary tax levying authority for the issuing subdivision, or by some board of trustees or commissioners of the sinking fund, then regardless of actual conformity in the maturities of the bonds to the present requirements of section 2295-12 of the General Code, the bonds are not "serial" bonds in the sense in which the term is used in the act in question, but must be regarded as bonds to be retired by means of a sinking fund within the meaning of section 2295-14 of the General Code.

These things being true, a holding that a particular issue of bonds actually sold and delivered after January 1, 1922, is not subject to section 2295-12 of the General Code, so that it is not necessary to re-form legislation in order to dispose of the securities, leads to the practical result that section 5649-1b will not have been complied with in the issuance of such bonds—a result irresistible because compliance with this section is a part of the action of the bond issuing authority in the sense that it is one of the requirements of the ordinance, or other similar measure authorizing the issuance of bonds—and forces the conclusion that such bonds—for example, the Elyria bonds dealt with in the first two opinions of this department mentioned herein,—are to be regarded as "sinking fund bonds"; so that though they may be issued in the sense of being sold and delivered on a date subsequent to January 1, 1922, when once issued the local sinking fund commission will continue in existence as the debt retirement administration of the issuing subdivision until these bonds are retired.

Putting it in the form of a general principle, the conclusion reached in the third of the opinions above referred to is modified to this extent: The phrase "bonds to be retired by means of a sinking fund" found in section 2295-14 of the General Code; that "heretofore issued" found in section 2976-26, 4513 and 5649-1 of

the General Code as amended in the Griswold Act, both refer to bonds authorized by legislation or other proceedings of the bond issuing authority fully effective prior to January 1, 1922; and the phrase "serial bonds" employed in sections 7614 and 5649-1 of the General Code is to be taken as referring to bonds, the legislation or other similar proceedings for the authorization of which was not completed until after January 1, 1922. The other conclusions in the said opinion so far as dependent upon this modification, are to be regarded as similarly modified.

*

The County Treasurer Has the Power of Determining in the First Instance the Necessity from Time to Time of Withdrawing Funds from the Inactive Depositaries and Placing Them in the Active Depositaries So as to Be at All Times Subject to Draft for the Purpose of Meeting the Current Expenses of the County.

No. 3391—(Opinion Dated July 24, 1922.)

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio:

Gentlemen—Your letter of recent date relating to the county depositary law (Sections 2715 et seq. G. C.), was duly received.

The question, as I understand it, is whether or not the county commissioners, after having designated the active and inactive depositaries of county funds and awarded to them the use of county funds, may place a limitation on the amount of funds which the county treasurer may withdraw from the inactive depositaries and place in the active depositaries for current use? The answer to this question, it seems to me, is to be found in Section 2715-1, G. C., which, among other things, provides that

"The deposits in active depositaries, as provided for in the next preceding section, shall at all times be subject to draft for the purpose of meeting the current expenses of the county. The deposits in inactive depositaries shall remain until such time as the county treasurer is obliged to withdraw a portion or all of same and place it in the active depositary or depositaries for current use."

The provision of the section just quoted, in my opinion, vests in the county treasurer the power of determining in the first instance when he is obliged to withdraw a portion of or all of the deposits in the inactive depositaries and place them in the active de-

positaries for current use, and in the absence of fraud or bad faith, his decision in the matter will not be disturbed.

While it is true the county commissioners, under the county depositary act, are clothed with the power of designating the active and inactive depositaries, yet the power of determining in the first instance the necessity, from time to time, of withdrawing funds from the inactive depositaries and placing them in the active depositaries, so as to be at all times subject to draft for the purpose of meeting the current expenses of the county, has not been confided in the commissioners, but rather in the county treasurer.

The only statutory limitation in the depositary act upon the amount that may be deposited in any depositary, is that to be found in the last sentence of Section 2715, G. C., but since it does not appear in your letter that the amount which the treasurer wishes to transfer to the active depositary is in excess of the prescribed limitation, it will be assumed that the limitation prescribed by Section 2715, G. C., is not involved.



In Actions for the Foreclosure of the Lien for Taxes Upon Delinquent Land, the Petition Should Describe the Property as Described in the Certificate of Delinquency and Should Further State a More Particular Description of the Same as Contained in the Deeds and Other Description of Said Premises.

No. 3412—(Opinion Dated July 28, 1922.)

Hon. Walter B. Moore, Prosecuting Attorney, Woodsfield, Ohio:

Dear Sir—This department acknowledges receipt of your letter of recent date requesting opinion as follows:

“In preparing a petition to foreclose an unredeemed land tax certificate, under Section 5718, G. C., would it be proper, in addition to the description appearing in said certificate, to set out a more minute and particular description of said real estate, as shown by the deed records; and, if this were done, could the sheriff convey the real estate by said minute description rather than the general description carried on the tax duplicate?”

Section 5718, General Code, provides that in an action in foreclosure on an unredeemed delinquent land tax certificate “it shall be sufficient * * * for the treasurer to allege * * * that the certificate has been duly filed * * *; that the amount of money appearing to be

due and unpaid, thereby is due and unpaid and a lien against the property therein described * * *. And the treasurer need not set forth any other or further special matter relating thereto." However, in the opinion of this department this statutory permission to file a concise and simplified petition does not prevent the inclusion of other material allegations in such petition. Though this is a special action, and though the pleadings must be conformed to the statute, yet in the absence of any express or implied prohibition to the contrary, allegations which are proper and not required by Section 5718 would not be objectionable. From the mere statement that certain allegations shall be "sufficient" and the mere dispensing with the necessity of other allegations, no inference can be drawn against the inclusion of such other allegations as may on practical grounds be found advisable and as may not be prejudicial to the defendant.

Section 5713 must be read in connection with Section 5718 and it provides that the action shall be brought in the "same manner as is now or hereafter may be provided by law for foreclosure of mortgages on land in this state."

Section 5718 itself provides that "the prayer of the petition shall be, that the court make an order that said property be sold by the sheriff of the county in the manner provided by law for the sale of real estate on execution." These provisions show the practical necessity of procuring a description of the lands and inserting it in the petition, in terms definite enough to enable the sheriff to make a sale and execute a conveyance to the purchaser as required by Section 11693 of the General Code.

It is, of course, well known that the description of real property which is carried on the duplicate for taxation purposes and which presumably is carried over into the delinquent land tax certificate made under authority of Section 5712 of the General Code and that mentioned in Section 5718 of the General Code is very much abbreviated in practice and, except as to city and town lots, whole quarter sections, etc.,—in short, in all cases in which the actual description of the property is by metes and bounds, contains no details adequate for a conveyance according to which a marketable title could be passed.

In the judgment of this department it is good practice in all cases where necessary to use in the petition the description of the real estate shown by the deed records of the county. It is further the opinion of this department that in such event the sheriff is authorized to convey real estate by the accurate description in the

petition, regardless of the description in the delinquent land tax certificate.

It is, however, the opinion of this department that the petition should allege the description in the land tax certificate and then contain an allegation that the property so described in the land tax certificate is more particularly described as follows, etc. In other words, it would be improper and unsafe in the opinion of this department to ignore the description in the land tax certificate and to use that in the deed records, for then it would be possible to join issue on the point that no such land had been returned and certified as delinquent; but if both descriptions are put in the petition, one designated as that found in the unredeemed land tax certificate and the other as a more particular description of the same property, and an allegation is made that both descriptions refer to one and the same tract of real estate, such pleading would, in the opinion of this department, be proper.

SECRETARY OF STATE

NEW CORPORATIONS

The Ohio Valley Composition Co., Marietta, \$25,000. C. L. Flanders, A. C. String, H. J. McCoy, E. J. McCoy, L. A. McDermott.

The Wintner Plan Finance Co., Cleveland, \$500. Alex S. Wintner, E. J. Bokor, Charles Brenner, Clara Guenther, M. E. N. Zeller.

The Brush Creek Oil and Gas Co., Canton, \$10,000. Philip Commins, Ladora E. Wolf, Orval E. Wolf, Anna C. Veithmeyer, Wilda L. Wolf.

The Reeke-Nash Motors Co., Cleveland, \$500. A. A. Stearns, C. H. Royon, E. E. Stearns, Harold Ziegler, Elsie Thiele.

The Glezerman Realty Co., Cleveland, \$2000. Joseph Levine, I. Shenderoff, A. A. Kalish, Arthur E. Kalish, Anna Miller.

The Miller Building Co., Warren, \$35,000. J. S. Gildard, M. W. Hammon, A. C. Stevens, Burt Hyde, N. A. Paine.

The Sterling Construction Co., Akron, \$30,000. Thomas M. Hatch, Elsie M. Hatch, G. I. Alexander, Q. C. Hasson, S. P. Baker.

The Kruse Service Co., Cleveland, \$10,000. Alfred J. Kruse, Earl H. Hutzel, Joseph N. Miller, William A. Carey, B. Ozier.

The United Radio Electric Stores Co., Dayton, \$10,000. A. W. Hudson, A. D. Miller, S. S. Kremer, Amber Mills, Flo V. Freeland.

The Lake Shore Construction Co., Ashtabula, \$10,000. Ray N. Case, W. D. Burgett, J. P. Dodge, H. E. Ricker, W. H. Young.

The Automobile Laundry & Sales Co., Columbus, \$5000. Edwin M. Walcutt, K. L. Bayer, John J. Chester, Jr., Frank Spira, W. W. Metcalf.

The William H. Durst Co., Cleveland, \$500. William H. Durst, G. F. Osborn, Corrine Allen, Lucille F. Osborn, R. G. Allen.

The Gray-Elliott Mfg. Co., Greenfield, \$20,000. Walter A. Gray, Horace W. Elliott, Ralph W. Hull, Fred Leaverton, George W. Coler.

The Hocking Livestock Co., Logan, \$2500. Samuel Blum, Andrew Rauber, W. F. Krinn, A. J. Sheet, M. H. Engle.

The Edw. T. Ash Motor Co., Columbus, \$10,000. Edward T. Ash, Geo. L. Avery, F. C. Bender, E. Congalton, D. Avery.

The Superior Spar Co., Cincinnati, \$10,000. Richard M. Lambert, Warren O. Dodds, Arthur W. Gordon, N. C. Kelly, Robert M. Green.

The Diamond Spar Co., Cincinnati, \$500. Richard M. Lambert, Robert M. Green, Warren O. Dodds, Arthur W. Gordon, N. C. Kelly.

The Sixth Street Building & Loan Co., Cincinnati, \$500,000. Charles Fraid, Albert Harris, Sidney Rosenstein, Chas. W. Skinner, Harry Gershaw, A. Ehlerding.

The Gordon-Marx Co., Cincinnati, \$5000. Frank T. Miles, Edith W. Marx, Joe J. Marx, Isadore Gordon, Moses Gordon.

The Maurer & McClain Drug Co., East Cleveland, \$25,000. William H. McClain, Wallace J. Newman, F. W. Woods, A. J. Maurer, Mrs. Anna L. Maurer.

The Samuel Bradley Productions Co., Cleveland, \$10,000. Samuel R. Bradley, B. H. Schwartz, Richard D. Deutsch, J. Goldman, Bernard J. Smolin.

The Shaw Mfg. Co., Cleveland, \$10,000. Jack E. Mendes, Harry E. Stone, Harry J. Katz, H. J. Tabor, I. Nungesser.

The Deposit and Finance Co., Cleveland, \$500. H. B. Mallette, W. P. B. Wachtel, John H. Sewell, O. C. Larsen, W. J. Semple.

The Brighton Park Amusement Co., Cleveland, \$20,000. A. C. Findlay, M. D. Coate, T. A. Shoos, A. R. Graeff, D. S. Clampitt.

The Stark Warehouse and Storage Co., Canton, \$500. J. A. Kress, John I. Bahl, Charles C. Green, H. W. Foltz, Abram W. Agler.

The Lynn Realty & Construction Co., Cleveland, \$15,000. A. W. Loewenthal, Samuel Caplin, Meyer Beylin, Jacob Stacel, P. M. Astor.

The Middletown Empire Credit Clothing Co., Middletown, \$25,000. Sidney G. Kusworm, Alma Zimmerman, Joseph F. Goodman, R. E. Marrs, Clara Seybold.

The Russell Motor Car Co., Columbus, \$500. Mark N. Russell, Ernest E. Eich, C. L. Dierker, Edwin A. Spicer, Jackson A. Taylor.

The Brotherhood Insurance Agency Co., Cleveland, \$500. C. L. Giersch, L. H. Neff, F. C. Smith, Joseph Hobert, Jr., Oscar J. Horn.

The R. & M. Contract Purchase Co., Springfield, \$50,000. William W. Mumma, Ralph E. Weadon, Fred G. Ziegler, Arthur J. Reed, Otto C. Burmeister.

The Urbana Furniture Mfg. Co., Urbana, \$250,000. J. C. Thackery, F. C. Gaumer, H. S. Earsom, Quim M. Zocum, L. C. Hovey.

The Broadway Bargain Co., Cincinnati, \$20,000. Amelia Staudacher, George W. Ryan, James D. Foster, Alfred H. Box, C. C. Mund.

The Empire Credit Clothiers Co., Dayton, \$25,000. Sidney G. Kusworm, Jos. F. Goodman, Alma Zimmerman, R. Marrs, Clara Seybold.

The Northside No. 449 Building Association Co., Cincinnati, \$50,000. Loton Thomas, Fred Wilimink, W. R. Strehli, H. J. Eicher, J. W. Keeler.

The Palmer La Rue Sand and Gravel Co., Chagrin Falls, \$5,000. C. B. Palmer, Leona B. Palmer, Norma B. Palmer, Charles P. LaRue, Nellie E. LaRue.

The Wood-Embleton Drug Co., Columbus, \$25,000. Edgar L. Wood, H. R. Tingley, F. E. Embleton, Stewart A. Hoover, D. C. Throckmorton.

The Crescent Jewelry Co., Portsmouth, \$25,000. Sidney G. Kusworm, Joseph F. Goodwin, Alma Zimmerman, R. E. Marrs, Clara Seybold.

The Herman Mfg. Co., St. Marys, \$30,000. W. H. Hermann, F. S. Crooks, E. H. Brocker, M. B. Gessaman, L. F. Dillman.

The Universal Paper Products Co., Clyde, \$150,000. J. C. Leach, Howard F. Pratt, H. L. Dibble, Eger L. Hamilton, Horace W. Bingham.

The Saas Insurance Agency Co., Cleveland, \$875. Alex S. Wintner, E. J. Bokor, Charles Brenner, Clara Guenther, M. E. N. Zellner.

The H. M. W. Realty Co., Toledo, \$60,000. LeRoy E. Eastman, George P. Smith, Emily Sullivan, Carrie E. Kanke, Stella M. Hughes.

The Vul Tex Rubber Co., Barberton,

\$500. Geo. B. Marz, Ralph Burroughs, Maude Hoppers, Edmund Burroughs, Alfred Herberich.

The Cadillac Underwriters Co., Columbus, \$20,000. Joseph W. Horner, Louis Danziger, Eugene K. Corle, Eugene Sondheim, Alfred O. Dunk.

The P. & H. Co., Cleveland, \$25,000. M. C. Hanson, Robert M. Morgan, Lawrence Hitchcock, C. W. Hitchcock, K. F. Laughlin.

The Marion Credit Rating Co., Marion, \$10,000. C. U. Graf, M. D. McDaniel, G. E. Frank, C. F. Smith, Homer R. Waddell.

The Endurance Supply Co., Cleveland, \$5,000. Jay G. Cross, Rudolph C. Nielson, Guy W. House, Frank W. Power, John A. Peters.

The Ashville Fire Proofing Co., Ashville, \$30,000. W. C. Nothstine, John H. Dun, Howard N. Hodges, Fred Cook, Milt Morris.

The Builders Savings and Loan Co., Cleveland, \$100,000,000. E. B. Thurman, D. M. Drake, F. M. Ferguson, R. L. Haverick, I. M. McDonough.

The Bolton Square Improvement Co., Cleveland, \$500. H. W. Sisson, P. A. White, J. C. Fogg, L. S. Sobel, M. M. Gleason.

The West Hill Home Building Co., Akron, \$25,000. Owen M. Roderick, J. Fred Smith, Beulah Hartman, Jonathan Taylor, Charles J. Carothers.

The Star Savings & Loan Association, Cleveland, \$1,000,000. Michael Yarosh, Wm. Lyzak, Wasyl Mochno, Nicolas Leganshuk, Wladimir Koziuk.

The Cleveland Hotel Co., Cleveland, \$500. John Connell, Fred Gardner, Howard C. Kopf, Joseph R. Neff, Alex Warden.

The R. and R. Building Co., Cleveland, \$25,000. J. B. Dworcken, L. S. Apple, M. Stern, M. L. Rothman, Hilda Freedman.

The Fortman-Heckler Hardware Co., Celina, \$20,000. Philip Fortman, Eugene C. Heckler, Lee Heckler, John A. Heckler.

The George S. Dales Co., Akron, \$400,000. Geo. S. Dales, Lotta E. Dales, Edith L. Young, Charles E. Smoyer, Frances O'Neil.

The Reicher Clothes Co., Cleveland, \$10,000. Sam B. Fitzsimmons, Harrison W. Fwino, M. L. Lillis, L. S. Klein, Jos. Greenfield.

PUBLIC UTILITIES COMMISSION

No. 2561—In the Matter of the Application of The Western Ohio Railway Company for Consent and Authority to Issue its Promissory Notes. Prayer Granted.

(Dated June 2, 1922.)

This day, it appearing to the Commission from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, this matter came on for consideration upon the application of The Western Ohio Railway Company, a corporation duly organized and existing under and by virtue of the laws of the State of Ohio, asking the consent and authority of this Commission to make and enter into a contract with the G. C. Kuhlman Car Company providing for the purchase of eight interurban cars at a price of \$11,469.90 each, twenty-five percentum of which is to be paid in cash on delivery of the cars, and the remaining seventy-five percentum in sixty equal monthly installments, to be evidenced by promissory notes, to be taken at par, and to bear interest at the rate of seven percentum per annum, and to make and issue such promissory notes.

The Commission, being fully advised in the premises, finds from the pleadings, exhibits and affidavits filed herein and its independent inquiry and investigation thereupon that the making and entering into of said contract and the making and issuing of said promissory notes is reasonably required and necessary for the extension and improvement of applicant's facilities and the maintenance and improvement of its service, and not for replacements, and is satisfied that its consent and authority therefor should be granted. It is, therefore,

Ordered, that said The Western Ohio Railway Company be, and hereby it is authorized:

(1) To make and enter into with The C. C. Kuhlman Car Company, a contract, or agreement, substantially in the form of the proposal, marked Exhibit "A," appended to the application herein, which exhibit hereby is made a part of this order by reference, providing for the purchase of eight (8) interurban cars at a total cost of \$11,468.90 each, twenty-five percentum of which consideration is to be paid in cash upon the delivery of said cars and the remaining seventy-five percentum

of which is to be paid in sixty equal, monthly installments, with interest at the rate of seven (7) percentum per annum, and

(2) To make and issue to said The G. C. Kuhlman Car Company in evidence of its indebtedness for and on account of the said deferred payments for said additional equipment, promissory notes of a total principal sum not exceeding sixty-eight thousand, eight hundred and thirteen dollars and forty cents (\$68,813.40), maturing in sixty monthly, equal installments, and bearing interest at the rate of seven percentum per annum.

It is further

Ordered, that said promissory notes be so issued and delivery in evidence of applicant's indebtedness for and on account of the acquisition, under said contract, of eight additional interurban cars. It is further

Ordered, that the applicant make verified report to this Commission of the issue and disposition of said notes pursuant to the terms and conditions of this order.

And it appearing that the applicant now has bonds issued and outstanding in excess of its issued and outstanding capital stock, it is further

Ordered, that the issue and disposition of said promissory notes in excess of applicant's issued and outstanding capital stock, as hereinbefore provided, be, and hereby they are specifically consented to, authorized and approved.

Supplemental Order.

(Dated August 5, 1922.)

The Commission having heretofore, to wit. upon the second day of June, 1922, by order duly made and entered herein, consented to and authorized the making, by said The Western Ohio Railway Company, of a contract with The G. C. Kuhlman Company for the purchase of eight interurban cars, and the issuing, as evidence of applicant's indebtedness for the deferred payments therefor, of promissory notes, maturing in sixty monthly installments, and bearing interest at the rate of seven percentum per annum, of the total principal sum of \$68,813.40, comes now the said The Western Ohio Railway Company and, by supplemental application duly filed herein, represents and shows to the Commission that, since the filing of its application herein and the making and entering of said order aforesaid, it has actually executed and signed a contract for the acquisition of said cars, which, in the

d of the notes to be issued on account of the deferred pay-
for said cars, varies from the terms set forth in the draft
contract appended to the application herein, in that said
all be of a principal amount equal to the unpaid install-
he cost of the car plus accrued interest. It is therefore,
d, that the order made and entered herein upon the sec-
une, 1922, be, and hereby the same is modified, amended
nted to read as follows, to wit:

ered, That said The Western Ohio Railway Company
reby it is authorized:

(1) To make and enter into with The G. C. Kuhlman Car
Company, a contract, or agreement, substantially in the form
of the agreement, marked 'Exhibit A' appended to the supple-
mental application herein, which exhibit hereby is made a
part of this order by reference, providing for the purchase of
eight (8) interurban cars at a total cost of \$11,468.90 each,
twenty-five percentum of which consideration is to be paid in
cash upon the delivery of said cars and the remaining seventy-
five percentum of which, with interest at the rate of seven
percentum per annum, is to be paid in sixty monthly install-
ments, and

(2) To make and issue to the said The G. C. Kuhlman Car
Company, in evidence of its indebtedness for and on account
of the said deferred payments for said additional equipment,
sixty promissory notes, of the total principal sum of eighty-
one thousand, fifty-six and thirty-eight one-hundredths dollars
(\$81,056.38), the respective principal sum of each of said sixty
notes, with the maturity date thereof, being set forth in the
aforesaid 'Exhibit A,' which hereby is made a part of this
order by reference."

It is further

Ordered, that in all other regards said order, of date June
second, 1922, be, and hereby the same is readopted.

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**No. 2563—In the Matter of the Application of The Fostoria and
Fremont Railway Company for Consent and Authority to Issue
its Promissory Notes. Prayer Granted.**

(Dated June 2, 1922.)

This day, it appearing to the Commission from the verified al-
legations in said application and the sworn statements and exhibits
filed in connection therewith, and other documentary evidence sub-
mitted, that the taking of oral testimony herein is unnecessary,

this matter came on for consideration upon the application of The Fostoria and Fremont Railway Company, a corporation duly organized and existing under and by virtue of the laws of the State of Ohio, asking the consent and authority of this Commission to make and enter into a contract with The G. C. Kuhlman Car Company providing for the purchase of two interurban cars at a price of \$11,468.90 each, twenty-five percentum of which is to be paid in cash on delivery of the cars, and the remaining seventy-five percentum in sixty equal monthly installments, to be evidenced by promissory notes, to be taken at par, and to bear interest at the rate of seven percentum per annum, and to make and issue such promissory notes.

The Commission, being fully advised in the premises, finds from the pleadings, affidavits and exhibits filed herein and its independent inquiry and investigation thereupon, that the making and entering into of said contract and the making and issuing of said promissory notes is reasonably required and necessary for the extension and improvement of applicant's facilities and the maintenance and improvement of its service, and not for replacements, and is satisfied that its consent and authority therefor should be granted. It is, therefore,

Ordered, that said The Fostoria and Fremont Railway Company be, and hereby it is authorized:

(1) To make and enter into with The G. C. Kuhlman Car Company, a contract, or agreement, substantially in the form of the proposal marked Exhibit "A," appended to the application herein, which exhibit hereby is made a part of this order by reference, providing for the purchase of two (2) interurban cars at a total cost of \$11,468.90 each, twenty-five percentum of which consideration is to be paid in cash upon the delivery of said cars and the remaining seventy-five percentum of which is to be paid in sixty equal, monthly installments, with interest at the rate of seven (7) percentum per annum, and

(2) To make and issue to said The G. C. Kuhlman Car Company in evidence of its indebtedness for and on account of the said deferred payments for said additional equipment, promissory notes of a total principal sum not exceeding seventeen thousand, two hundred and three dollars and thirty-five cents (\$17,203.35), maturing in sixty monthly, equal installments, and bearing interest at the rate of seven percentum per annum.

It is further

Ordered, that said promissory notes be so issued and delivered in evidence of applicant's indebtedness for and on account of the

acquisition, under said contract, of two additional interurban cars. It is further

Ordered, that the applicant make verified report to this Commission of the issue and disposition of said notes pursuant to the terms and conditions of this order.

Supplemental Petition.

(Dated August 5, 1922.)

The Commission having heretofore, to wit, upon the second day of June, 1922, by order duly made and entered herein, consented to and authorized the making, by said The Fostoria and Fremont Railway Company, of a contract with The G. C. Kuhlman Car Company for the purchase of two interurban cars, and the issuing, as evidence of applicant's indebtedness for the deferred payments therefor, of promissory notes, maturing in sixty installments, monthly, and bearing interest at the rate of seven percentum per annum, of the total principal sum of \$17,203.35, comes now said The Fostoria and Fremont Railway Company and, by supplemental application duly filed herein, represents and shows to the Commission that, since the filing of its application herein and the making and entering of said order aforesaid, it has actually executed and signed a contract for the acquisition of said cars, which, in the regard of the notes to be issued on account of the deferred payments for said cars, varies from the terms set forth in the draft of the contract appended to the application herein, in that said notes shall be of a principal amount equal to the unpaid installment of the cost of the car plus accrued interest. It is, therefore,

Ordered, that the order made and entered herein upon the second day of June, 1922, be, and hereby the same is modified, amended and supplemented to read as follows, to wit:

"Ordered, That said The Fostoria and Fremont Railway Company be, and hereby it is authorized:

(1) To make and enter into with The G. C. Kuhlman Car Company, a contract, or agreement, substantially in the form of the agreement, marked 'Exhibit A,' appended to the supplemental application herein, which exhibit hereby is made a part of this order by reference, providing for the purchase of two (2) interurban cars at a total cost of \$11,468.90 each, twenty-five percentum of which consideration is to be paid in cash upon the delivery of said cars and the remaining seventy-five percentum of which, with interest at the rate of seven percentum per annum, is to be paid in sixty monthly installments, and

(2) To make and issue to the said The G. C. Kuhlman

Car Company, in evidence of its indebtedness for and on account of the said deferred payments for said additional equipment, sixty promissory notes, of the total principal sum of twenty thousand, two hundred sixty-four and ten one-hundredths dollars (\$20,264.10), the respective principal sum of each of said sixty notes, with the maturity date thereof, being set forth in the aforesaid 'Exhibit A,' which hereby is made a part of this order by reference."

It is further

Ordered, that in all other respects said order, of date June second, 1922, be, and hereby the same is readopted.

No. 2521.—In the Matter of the Application of The Huron Telephone Company of Huron, Erie County, Ohio, for Authority to Issue and Sell Ten Thousand Dollars of its Common Capital Stock. Prayer Granted.

(Dated August 11, 1922.)

This day, it appearing to the Commission from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, this matter came on for consideration upon the application of The Huron Telephone Company, (a corporation duly organized and existing under and by virtue of the laws of the State of Ohio), asking the consent and authority of this Commission to issue and dispose of \$10,000.00, par value, of its common capital stock, the proceeds arising from the sale thereof to be used:

To discharge and retire its outstanding five-year bonds, issued in 1921, of such principal sum.....	\$6,000.00
To pay and discharge certain promissory notes heretofore issued, of the principal sum of.....	4,000.00

The Commission, being fully advised in the premises, finds from the pleadings and exhibits filed herein and its independent inquiry and investigation thereupon:

That the applicant now has outstanding mortgage bonds, issued in 1921 and maturing in five years from date, of the principal sum of \$6000.00, which must, on or before said maturity date, be paid and discharged or lawfully refunded;

That the applicant is unable, by the production of canceled vouchers or proper accounts of record, to demonstrate the expenditure for capital purposes of the said sum of \$4000.00, alleged to have been procured by the issue of said promissory notes, and

That the issue of applicant's common capital stock of the par value of \$6000.00 is reasonably required and the money to be procured thereby, necessary for the payment and discharge of applicant's said bonded indebtedness.

and is satisfied that consent and authority for the issue and disposition of applicant's common capital stock of the par value of six thousand dollars should be granted. It is, therefore,

Ordered, that said The Huron Telephone Company be, and hereby it is authorized to issue its common capital stock of the par value of six thousand dollars (\$6000.00), and that said capital stock be sold for the highest price obtainable but not less than the par value thereof. It is further

Ordered, that the proceeds arising from the sale of said capital stock be, by the applicant, devoted to and used for the payment and discharge of its outstanding first mortgage, five year, six per cent. bonds of the principal sum of \$6000.00, and for no other purpose whatsoever. It is further

Ordered, that, forthwith upon the acquisition of said bonds, the applicant cancel and destroy the same. It is further

Ordered, that the applicant make verified report to this Commission of the issue and disposition of said capital stock, the expenditure of the proceeds thereof, and the cancellation and destruction of said bonds pursuant to the terms and conditions of this order. It is further

Ordered, that said application, in so far as it asks consent and authority to issue common capital stock of the additional par value of four thousand dollars be, and hereby the same is denied.

✽

No. 2531—In the Matter of the Application of The Apple Creek Light and Power Company for Consent and Authority to Issue \$20,000.00 Common Capital Stock. Prayer Granted.

(Dated August 11, 1922.)

This day, it appearing to the Commission from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, this matter came on for consideration upon the application of The Apple Creek Light and Power Company, (a corporation duly organized and existing under and by virtue of the laws of the State of Ohio), asking the consent and authority of this Com-

mission to issue and dispose of common capital stock of the par value of \$20,000.00, the proceeds arising from the sale thereof to be used:

To reimburse its treasury for the sum of \$13,255.82, not procured by the issue of stock, bonds, notes or other evidences of indebtedness, actually expended therefrom to April thirtieth, 1922, for the purchase of material and the construction and equipment of a transmission line from a point in Green township, Wayne county, Ohio, where electrical energy is to be procured from The Wooster Electric Company, to the village of Apple Creek, Ohio, and the construction and equipment of a comprehensive distribution plant in and about said village of Apple Creek, and

To provide for the completion and extension of the aforesaid electrical transmission and distribution project.

The Commission, being fully advised in the premises, finds from the pleadings and exhibits filed herein and its independent inquiry and investigation thereupon:

That, within the five years next preceding the date of the filing of the application herein and to and including April thirtieth, 1922, the applicant actually expended from its treasury for the purchase of material and the construction and equipment of its electrical transmission and distribution system, the sum of \$13,255.82, none of which was procured by the issue of stock, bonds, notes or other evidences of indebtedness, and the capitalization of which has not heretofore been authorized by orders of this Commission:

That the cost of completing the applicant's said proposed system is the sum of \$6744.18, and

That the issue of applicant's common capital stock of the par value of \$20,000.00 is reasonably required, and the money to be procured thereby, necessary for the reimbursement of applicant's treasury for the aforesaid uncanceled capital expenditures therefrom, and for the construction, completion, extension and improvement of its facilities,

and is satisfied that consent and authority for the issue and disposition of said common capital stock should be granted. It is, therefore,

Ordered, that said The Apple Creek Light and Power Company be, and hereby it is authorized to issue its common capital stock of the par value of twenty thousand dollars (\$20,000.00), and that said capital stock be sold for the highest price obtainable, but not less than the par value thereof. It is further

Ordered, that the proceeds arising from the sale of said capital stock be, by the applicant, devoted to and used for the follow-

ing purposes, and no others, to wit:

The reimbursement of its treasury for the moneys, not procured by the issue of stock, bonds, notes or other evidences of indebtedness, actually expended therefrom within the five years next preceding the date of the filing of the application herein and to and including April thirtieth, 1922, for the purchase of material and the construction and equipment of an electrical transmission line from a point in Green township, Wayne county, Ohio, (where electrical energy will be procured from The Wooster Electric Company) to the village of Apple Creek, Ohio, and the construction and equipment of an electrical distribution plant in and about said village of Apple Creek, Ohio, the capitalization of which has not heretofore been authorized by order of this Commission, \$13,255.82.

The payment of the cost of completing and extending the aforesaid electrical project, \$6,744.18.

It is further

Ordered, that the applicant make verified report to this Commission, semi-annually within fifteen days after the close of each calendar, semi-annual period, of the issue and disposition of said capital stock and, in full detail, the expenditure of the proceeds thereof pursuant to the terms and conditions of this order.

✽

No. 2626—In the Matter of the Application of Thad Wanamaker to Sell, and of E. M. Root to Purchase the Bus Line of the Said Thad Wanamaker, Operating Between Warren and Cortland. Prayer Granted.

(Dated August 9, 1922.)

This day, it appearing to the Commission from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, this matter came on for consideration upon the joint application of Thad Wanamaker and E. M. Root, individuals engaged in operating automobile bus lines between Warren and Cortland, Ohio, asking the consent to and approval, by this Commission, of the sale, by said first named applicant, and the purchase by the latter of all the property, rights and other assets composing the said bus line so operated by the said Thad Wanamaker.

Upon consideration whereof, and being fully advised in the premises, the Commission finds from the pleadings and exhibits

filed herein and its independent inquiry and investigation thereupon:

That the public will, upon such sale and purchase of said public utility property, be furnished adequate service for a reasonable and just rate, rental, toll or charge therefor.

and is satisfied that its consent and authority for such sale and purchase of said property should be granted. It is, therefore,

Ordered, that the said Thad Wanamaker be, and hereby he is authorized to sell to E. M. Root all of the property, rights and other assets composing the automobile bus lines now operated by the said Thad Wanamaker between Warren and Cortland, Ohio; and the said E. M. Root hereby is authorized to purchase and acquire the same. It is further

Ordered, that, forthwith upon the exercise of the authority herein granted, said parties file with this Commission schedules providing for their respective withdrawal from and inauguration of service within the territory now served by means of said property. It is further,

Ordered, that nothing herein shall be construed to be a consent to or approval, by this Commission, of any increase in rates or diminution of service within the territory now served by means of said property, nor shall the findings hereinbefore set forth as to rates and service be binding upon this Commission in any future proceeding involving rates and/or service.

✽

No. 2625—In the Matter of the Application of The Tiffin and Fostoria Railway Company to Issue and Dispose of Capital Securities. Prayer Granted.

(Dated August 19, 1922.)

This day, it appearing to the Commission from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, this matter came on for consideration upon the application of The Tiffin and Fostoria Railway Company, a corporation duly organized and existing under and by virtue of the laws of the State of Ohio, which has contracted to purchase all of the property, rights and other assets of The Tiffin, Fostoria and Eastern Electric Railway Company, asking the consent and authority of this Commission to issue its common capital stock of the par value of

\$1750.00 and its first mortgage, six per cent. twenty-five year gold bonds of the principal sum of \$175,000.00, the proceeds arising from the sale thereof to be used to pay the agreed consideration of said property, rights and other assets of said The Tiffin, Fostoria and Eastern Electric Railway Company.

The Commission, being fully advised in the premises, finds from the pleadings and exhibits filed herein and its independent inquiry and investigation thereupon:

That, for purchase and sale purposes, the value of all the property rights and other assets of said The Tiffin, Fostoria and Eastern Electric Railway Company is not less than the sum of \$176,750.00;

That the issue of applicant's common capital stock of the par value of \$1750.00 and its first mortgage bonds of the principal sum of \$175,000.00 is reasonably required, and the money to be procured thereby, necessary for the acquisition of said property aforesaid, and

That the issue of applicant's said first mortgage bonds of the principal sum of \$173,250.00 in excess of its issued and outstanding capital stock, and the expenditure of the proceeds thereof, as such excess, should be specifically consented to, authorized and approved,

and is satisfied that consent and authority for the issue and disposition of said common capital stock and said first mortgage bonds, should be granted. It is, therefore,

Ordered, that said The Tiffin and Fostoria Railway Company be, and hereby it is authorized to issue its common capital stock of the total par value of one thousand seven hundred and fifty dollars (\$1750.00), and its first mortgage, six per cent., twenty-five year gold bonds, dated July first, 1922, of the total principal sum of one hundred and seventy-five thousand dollars (\$175,000.00), and that said common capital stock and said first mortgage bonds be sold for the best price obtainable, but not less than the par value of said common capital stock nor less than the principal sum of said first mortgage bonds. It is further

Ordered, that the issue of said first mortgage bonds of the principal sum of one hundred seventy-three thousand, two hundred and fifty dollars (\$173,250.00) in excess of applicant's issued and outstanding capital stock, and the expenditure of the proceeds thereof, as such excess, as hereinafter provided, be, and hereby they are specifically consented to, authorized and approved. It is further

Ordered, that the proceeds arising from the sale of said common capital stock and first mortgage bonds be, by the applicant, devoted to and used for the following purpose, and no other, to wit,

the payment of the consideration for all of the property, rights and other assets of The Tiffin, Fostoria and Eastern Electric Railway Company, as more fully enumerated and described in the application herein which, in so far as it describes and enumerates said property and assets, hereby is made a part of this order by reference. It is further

Ordered, that the applicant make verified report to this Commission of the issue and disposition of said common capital stock and first mortgage bonds and the expenditure of the proceeds thereof pursuant to the terms and conditions of this order. It is further

Ordered, that the finding, hereinbefore set forth, as to the value of said property, rights and other assets of said The Tiffin, Fostoria and Eastern Electric Railway Company, and the within authorization of the capitalization of the agreed consideration to be passed therefor, shall not be binding upon this Commission in any future proceeding involving rates and/or service.



Advanced Utility Rate Proceeding No. 21—In the Matter of the Proposed Increased Rates of The Ohio Utilities Company for Gas and Electric Service, Filed to Become Effective August 26, 1920.

(Dated August 19, 1922.)

This day, after full hearing and argument by counsel, this matter came on for further consideration upon the application of the respondent, The Ohio Utilities Company, asking a rehearing with respect to the matters and things decided and determined by the order made and entered herein upon the fifth day of July, 1921.

The Commission, being fully advised in the premises, finds that sufficient cause has been made to appear for a rehearing of said matter. It is, therefore,

Ordered, that said The Ohio Utilities Company be, and hereby it is granted a rehearing with respect to the matters and things decided and determined by the order, made and entered herein upon the fifth day of July, 1921, and that said rehearing be, and hereby it is assigned for Tuesday, October seventeenth, 1922, at ten o'clock a. m., Central Standard Time, at the hearing room of this Commission in the State Office Building, Columbus, Ohio.

ATTORNEY GENERAL

If the County Auditor Finds that False and Fraudulent Returns for Taxation Have Been Made by a Decedent, Such Auditor is Not Limited to the Five Years Preceding the Year in which the Inquiries and Corrections were Made in Placing on the Tax Duplicate Such Amount of Omitted Taxes as He Believes the Estate Should Pay.

No. 3411—(Opinion Dated July 28, 1922.)

Hon. R. S. Park, Prosecuting Attorney, Chardon, Ohio:

Dear Sir—In your letter of recent date you state that T. died a resident of Geauga county, where he had lived continuously since 1911; that his estate was comprised principally of mortgage bonds of the valuation of over \$300,000, and that during the period between 1911 and 1912 inclusive, T. concealed most, if not all, of this property in his tax returns under such circumstances as that the taxing officials are satisfied that his returns for these years were “false” within the meaning of Section 5398 of the General Code.

You submit the question as to whether the county auditor, if upon inquiry he is satisfied that T. did make false returns in each of the years intervening between 1911 and the date of his death, is authorized, upon making the necessary inquiries, to place upon the duplicate against the estate of T. omitted taxes for all of these years or only for the five years next preceding the year in which the inquiries and corrections are made.

You point out that there can be no question that the five-year limitation applies when an incorrect or insufficient tax return is made in good faith and Section 5399 of the General Code is resorted to for authority to place omitted taxes on the duplicate for preceding years, but suggest that the limitation does not apply in case of false returns.

This question involves consideration of the following sections of the General Code:

“Sec. 5398. If a person required to list property or make a return thereof for taxation, either to the assessor or the county auditor, in the year 1911 or in any year thereafter makes a false return or statement, or evades making a return or statement, the county auditor for each year shall ascertain as near as practicable, the true amount of personal property, moneys, credits, and investments that such person ought to

have returned or listed for the year 1911 or for any year thereafter for which the inquiries and corrections provided for in this chapter are made. To the amount so ascertained as omitted for each year he shall add fifty per cent., multiply the omitted sum or sums, as increased by said penalty by the rate of taxation belonging to said year or years, and accordingly enter the amount on the tax lists in his office, giving a certificate therefor to the county treasurer who shall collect it as other taxes."

"Sec. 5399. If any person required to list property, * * * in the year nineteen hundred and eleven, or in any year or years thereafter fails to make a return or statement, or if such person makes a return or statement of only a portion of his taxable property * * * the county auditor for each year as to such property omitted and as to property not returned * * * shall ascertain as near as practicable the true amount of * * * property * * * that such person ought to have returned or listed, * * * for not exceeding the five years next preceding the year in which the inquiries and corrections provided for in this section and in the next preceding and the next two succeeding sections are made and not in any event prior to the year nineteen hundred and eleven. * * *"

These sections formerly read as follows:

"Sec. 5398. If a person required to list property or make a return thereof for taxation, either to the assessor or county auditor, in any year or years makes a false return of statement, or evades making a return or statement, the county auditor for each year, shall ascertain as near as practicable, the true amount of personal property, moneys, credits and investments that such person ought to have returned or listed for not exceeding the five years preceding the year in which the inquiries and corrections provided for in this chapter are made. To the amount so ascertained, as omitted for each year he shall add fifty per cent, multiply the omitted sum or sums, as increased by said penalty, by the rate of taxation belonging to said year or years, and accordingly enter the amount on the tax lists in his office, giving a certificate therefor to the county treasurer who shall collect it as other taxes."

"Sec. 5399. If any person required to list property * * * in any year or years, fails to make a return or statement, or if such person makes a return or statement of only a portion of his taxable property, * * * the county auditor, for each year, as to such property omitted and as to property not returned * * * shall ascertain as near as practicable the true amount of * * * property * * * that such person ought to have returned or listed, * * * for not exceeding the five years next preceding the year in which the inquiries and corrections provided for

in this section and in the next preceding and the next two succeeding sections are made, * * *

When the so-called Smith-Alsdorf law, the predecessor to the present Smith one per cent law, was passed in 1910, a part of the policy embodied in that measure was a sort of general amnesty to tax dodgers in the hope that together with the limitation on tax rates such a policy would bring about a voluntary return of intangible property. So we find these two sections, with others, being put into their present form as part of this tax limitation act. 101 O. L., 430.

It seems clear that the main purpose of amending the two sections was to prevent the inquiries and corrections from going back of the year 1911. However, in the course of amendment of Section 5398, the significant language "for not exceeding the five years preceding the year," which had formerly been in Section 5398, was omitted therefrom. True, the legislature at the same time left in both the sections their mutual references to each other. So that Section 5398, as amended, still refers to the "inquiries and corrections provided for in this chapter" and Section 5399 still says, as it formerly did, "for not exceeding the five years next preceding the year in which the inquiries and corrections provided for in this section and in the next preceding * * * sections are made." In these respects there was no change in the sections.

It is impossible to escape the conclusion that the legislature deliberately left out the five-year limitation which was formerly found in Section 5398. Of course it might be argued that in view of the reference in this section to the provisions of Section 5399 and the reference back in that section to the provisions of Section 5398, the five-year limitation found in Section 5399 is made to apply to the proceedings under both sections so that the legislature's motive in omitting this language in 1910 may have been merely to dispense with unnecessary repetition. On the other hand you argue the legislative motive must be to make this, together with other distinctions between the case of a bona fide but incorrect return and a deliberately false and fraudulent return. From the viewpoint of this department both these arguments are founded upon mere speculation. It is not so important to inquire why the legislature struck out the vital language, the absence of which has been noted, as it is to observe that it did strike it out and to inquire what the effect of so doing is. In the opinion of

this department it is impossible to avoid the conclusion that there is no longer any limit except the year 1911 on the number of years preceding the years in which the inquiries and corrections are made under Section 5398 of the General Code for which omitted taxes may be placed on the duplicate. The mere fact that Section 5399 imposes a limit upon the action of the county auditor thereunder and in so doing refers as well to the inquiries and corrections provided for in the next preceding section as to those provided for "in this section," while it affords some slight evidence of a contrary intention, is not enough to overthrow the inference in support of the conclusion above announced which must be drawn from the change made in Section 5398 itself; for Section 5399 does not provide that all action under the preceding section shall be limited to the five years prior to the year in which inquiries and corrections are made, which would be the exact way of stating the opposite rule, but it merely enacts that action under Section 5399 in placing omitted taxes on the duplicate in case of bona fide incorrect or incomplete returns shall not go back further than the five years next preceding the years in which the inquiries and corrections provided for in that section and in the next preceding and the next two succeeding sections are made. The section is so phrased and has always been so phrased in the opinion of this department because of the form in which the power of the auditor to inquire is conferred. In a sense it might be said that the auditor must find that a false return has been made before he can proceed at all to inquire under Section 5398; and that he must find that an innocent but incorrect return has been made or a bona fide omission to list has occurred before he can proceed at all under Section 5399. Undoubtedly in practice the auditor cannot discover what the circumstances may have been in many cases until he has made his inquiries. The legislature could have expressed its intention more clearly by authorizing one inquiry and then providing that in the event the auditor found that the return was false and fraudulent he should add the fifty per cent penalty and go back an indefinite number of years but not beyond the year 1911, but if he found that returns were unintentionally incorrect or incomplete he should not add the penalty and should not go back more than five years. This it is believed is what the legislature was aiming at and in order to make it clear that separate proceedings need not be had for each class of cases, these references from one section to another in the group were placed in the statutes at an early date and have always been there. Their presence being thus accounted for, the infer-

ence that the legislature intended the five-year limitation which is now mentioned only in 5399 to apply to Section 5398 as well because of the form of the words used is overthrown or at least greatly weakened, especially in the face of the fact that the five-year limitation was formerly found in both sections together with these cross references.

For the foregoing reasons this department is of the opinion, as above stated, that if the county auditor finds that false and fraudulent returns were made by the decedent he is not limited to the five years preceding the year in which the inquiries and corrections were made in placing on the duplicate such amount of omitted taxes as he believes the estate should pay.

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Section 1008 of the General Code Pertaining to the Employment of Women and Other Similar State Laws, Do Not Apply to the Employment of Females as Telegraph Operators on Interstate Railroads.

No. 3392—(Opinion Dated July 24, 1922.)

Department of Industrial Relations, Hon. Percy Tetlow, Director,
Columbus, Ohio:

Gentlemen—This department acknowledges receipt of your letter transmitting correspondence between the general superintendent of the Southwest District of the Baltimore and Ohio Railroad Company and the chief of the division of factory inspection of the department of Industrial Relations in which the question is raised as to the application of the law of the State of Ohio relative to the hours of labor of females in industry to female employes of an interstate railroad company engaged in the transmission and receipt of telegraphic messages in connection with the movement of trains.

It will not be necessary to quote any statutes, but is sufficient to state that the Ohio legislation in question limits the hours of labor per day and per week respectively of females employed on work of this character; and that the congress of the United States has passed a law which has been in effect for several years regulating the hours of labor of employes of interstate railroads engaged in this same work. See Section 8677 and 8678, Compiled Statutes of the United States which make it plain that telegraph operators are included within the scope of the Federal Act. The hours mentioned

in the Federal Act are more liberal from the standpoint of an employer than those mentioned in the State Act, so that if it is possible for both laws to be in effect at the same time, the employment of a person for a given number of hours might be a violation of the state law without being in violation of the federal law. It should also be stated that while the federal law does not directly regulate the hours of labor per week as does the state law, there is a provision in Section 8678 of the Compiled Statutes of the United States regulating the number of days of over-time service in any one week.

There is also in another federal law, Section 8688, Compiled Statutes of the United States, a provision fixing eight hours as the standard day's work for the purpose of interpretation of contracts of labor and for the purpose of reckoning the compensation for services of employes of common carriers by railroads in interstate commerce.

The Federal Act contains no specific provisions relative to the employment of females as such, its regulations being applicable to employes of both sexes alike.

The general principle is that in the absence of legislation by congress, the laws of the state are competent to govern the relation of employer and employe in interstate commerce and to impose police regulations for the protection of the health, comfort and safety of persons engaged in interstate commerce; but that congress also by reason of the express grant of power in the federal constitution to regulate interstate commerce, has the power to legislate on these subjects. That is to say, the federal power in cases of this kind is not exclusive, so that the states may act in the absence of congressional legislation. The federal power of this character is sometimes classed as "concurrent" with that of the state, but that term is a misnomer, for when congress has so acted as to manifest an intention to cover a particular field of police regulations in the general field of interstate commerce, its action then becomes the sole and exclusive law of the land. That is to say, the state law does not yield to the federal law simply because the federal law is paramount, and simply to the extent of its inconsistency with the federal law, but it becomes null and void during the life of the federal law no matter how compatible with the federal law it may be.

These principles have been applied to the federal hours of service act in several cases, but one of which need be noted. In this connection, see *Erie R. R. Co. v. N. Y.*, 233 U. S., 671. The state courts had sustained a judgment against the railroad company, an interstate carrier, for a statutory penalty for violation of a certain

section of the New York statutes regulating the hours of labor of telegraph and telephone operators and signal men on surface, subway and elevated railroads. The Supreme Court of the United States reversed this judgment. The following is found in the opinion per Mr. Justice McKenna:

"The relative supremacy of the state and national power over interstate commerce need not be commented upon. Where there is conflict, the state legislation must give way. Indeed, when Congress acts in such a way as to manifest its purpose to exercise its constitutional authority, the regulating power of the state ceases to exist. *Adams Exp. Co. v. Croninger*, 226 U. S. 491, 57 L. ed. 314, 44 L. R. A. (N. S.) 257, 33 Sup. Ct. Rep. 148, and cases cited. Also *Chicago, R. I. & P. R. Co. v. Hardwick Farmers Elevator Co.* 226 U. S. 426, 57 L. ed. 284, 46 L. R. A. (N. S.) 203, 33 Sup. Ct. Rep. 174; *Chicago I. & L. R. Co. v. Hackett*, 228 U. S. 559, 57 L. ed. 966, 33 Sup. Ct. Rep. 581; *McDermott v. Wisconsin*, 228 U. S. 115, 57 L. ed. 754, 47 L. R. A. (N. S.) 984, 33 Sup. Ct. Rep. 431; *Minnesota Rate Cases (Simpson v. Shepard)* 230 U. S. 352, 57 L. ed. 1511, 48 L. R. A. (N. S.) 1151, 33 Sup. Ct. Rep. 729; *Taylor v. Taylor*, 232 U. S. 363, ante, 636, 34 Sup. Ct. Rep. 350.

This is the general principle. It was given application to an instance like that in the case at bar in *Northern P. R. Co. v. Washington*, 222 U. S. 370, 56 L. ed. 237, 32 Sup. Ct. Rep. 160. The case arose upon an asserted conflict between the hours of service law of March 4, 1907, the one involved here, and a law of the state of Washington which also regulated the hours of railway employes. The latter became effective June 12, 1907; that is, before the time the Federal hours of service law was in force, but after its enactment. The state act resembled the Federal act, and prohibited the consecutive hours of service which had taken place on the Northern Pacific Railroad, and on account of which the action was brought by the attorney general of the state against the company for the penalties prescribed for violation of the act. The railroad company admitted the facts, but denied liability under the act, asserting that its train was an interstate train and was not subject to the control of the state, because within the exclusive control of Congress on that subject. The trial court granted a motion for judgment on the pleadings, which was affirmed by the supreme court of the state. That court held that the train was an interstate train, and conceded that Congress might prescribe the number of consecutive hours an employe of a carrier so engaged should be required to remain on duty; and when it is so legislated upon the subject, its act superseded any and all state legislation on that particular subject. But the court held that the act of Congress did not apply because of its provision that it should not take effect until one year after its

passage, and until such time it should be treated as not existing.

We reversed the judgment on the ground that the view expressed was not 'compatible with the paramount power of Congress over interstate commerce,' and we considered it elementary that the police power of the state could only exist from the silence of Congress upon the subject, and ceased when Congress acted or manifested its purpose to call into play its exclusive power. It was further said that the mere fact of the enactment of the act of March 4, 1907, was a manifestation of the will of Congress to bring the subject within its control, and to reason that because Congress chose to make its prohibitions take effect only after a year, it was intended to leave the subject to state power, was to cause the act of Congress to destroy itself. There was no conceivable reason, it was said, for postponing the prohibition if it was contemplated that the state law should apply in the meantime. The reason for the postponement, it was pointed out, was to enable the railroads to meet the new conditions.

The reasoning of the opinion and the decision oppose the contention of defendant in error and of the court of appeals, that the state law and the Federal law can stand together, because as expressed by the court of appeals, 'the state has simply supplemented the action of the Federal authorities,' and, on account of special conditions prevailing within its limits, has raised the limit of safety; and the form of the Federal statute, although 'not expressly legalizing employment up to that limit, fairly seems to have invited and to have left the subject open for supplemental state legislation if necessary.'

We realize the strength of these observations, but they put out the view, we think, the aground of decision of the cases, and, indeed, the necessary condition of the supremacy of the congressional power. It is not that there may be division of the field of regulation, but an exclusive occupation of it when Congress manifests a purpose to enter it.

Regulation is not intended to be a mere wanton exercise of power. It is a restriction upon the management of the railroads. It is induced by the public interest or safety, and the 'hours of service' law of March 4, 1907, is the judgment of Congress of the extent of the restriction necessary. It admits of no supplement; it is the prescribed measure of what is necessary and sufficient for the public safety, and of the cost and burden which the railroad must endure to secure it."

This case in its application to the general principles above laid down would be entirely decisive of the present question if the federal law attempted to regulate the hours of service per week and the state law applied alike to males and to females. The difficulty encountered here is engendered by these two dissimilarities in the

two laws. For example, it is suggested by the chief of the division of workshops, factories and public buildings that the state law is in the field of legislation for the protection of women as a class; and it appears from the facts that the particular provision of the state law which is alleged to have been violated in the case in question is not that which regulates the hours of service per day, but that which regulates the hours or days of service per week. These points deserve brief consideration. They will be taken up in the inverse order of that previously mentioned herein.

First, as to the fact that the federal law does not regulate hours or days of service per week: This it is believed is immaterial, being answered by the remark of Mr. Justice McKenna that the federal law is intended to be

“the prescribed measure of what is necessary and sufficient for the public safety, and of the cost and burden which the railroad must endure to secure it.”

That is to say, if both the state and federal laws applied to hours of service of all employes without discrimination on the footing of sex, the mere fact that the state law contains a provision regulating the hours of service per week while the federal law does not directly regulate this particular subject, would not prevent the operation of the principle above laid down so as to nullify the state provision with respect to hours of service per week as well as that with respect to hours of service per day. In other words, congress having entered the field of legislation respecting hours of service of employes of this character, its legislation becomes exclusive in the sense that its silence on the question of hours of service per week becomes indicative of the intention of congress that there shall be no limitation on such hours of service.

The other point offers greater difficulty. It may be contended that the state law is not a regulation of the hours of service of telegraph operators as such, but a regulation of the hours of labor of women as such; and that congress by entering the field of legislation respecting the hours of service of telegraph operators on interstate railroads as such did not thereby manifest any intention to exclude the operation of the state power with respect to the hours of service of women as such, though engaged as telegraph operators. This point makes it necessary to consider the limitations of the principle thus far developed. As well put in 12 C. J., 18:

“To have the effect of superseding a state statute, it is not sufficient that a congressional regulation of commerce invades the same field; it must expressly cover the precise

subject matter, or show a purpose to take legislative possession of the whole field, * * * . A state statute may be allowed to stand unless the repugnancy and conflict between it and the act of congress are so direct and positive that the two acts cannot be reconciled or stand together." * * *

The statement of the text is justified by the following quotation from *Savage v. Jones*, 225 U. S., 501:

"When the question is whether a Federal act overrides a state law, the entire scheme of the statute must of course be considered and that which needs must be implied is of no less force than that which is expressed. If the purpose of the act cannot otherwise be accomplished—if its operation within its chosen fields else must be frustrated and its provisions be refused their natural effect—the state law must yield to the regulation of Congress within the sphere of its delegated power. But the intent to supersede the exercise by the State of its police power as to matters not covered by the Federal legislation is not to be inferred from the mere fact that Congress has seen fit to circumscribe its regulation and to occupy a limited field. In other words, such intent is not to be implied unless the act of Congress fairly interpreted is in actual conflict with the law of the State."

See also, *Missouri, etc., R. Co. v. Harris*, 234 U. S., 412.

To be sure, these words were used in a case in which the claim that the federal legislation had superseded that of the state was rather tenuous, but that they state a well-established principle cannot be gainsaid.

Notwithstanding this limitation, it is the opinion of this department that the state law, though intended to apply to women only, does so conflict with the intention of congress as manifested through its legislation as to make it impossible for the two to operate together in the same field. This is so because it is clear that congress contemplated all employees both male and female in the scope of its legislation, and because Section 8678 of the United States Compiled Statutes not only contains negative language, but also, and by way of exception, certain affirmative and permissive language. The following may be quoted:

"No operator * * * shall be required or permitted to be or remain on duty for a longer period than nine hours in any twenty-four hour period * * * in all * * * places * * * continuously operated night and day, nor for a longer period than thirteen hours in all * * * places * * * operated only during the day time, except in case of emergency, when the employees named in this proviso may be permitted to be and remain on

duty for four additional hours in a twenty-four hour period on not exceeding three days in any week."

It is impossible to reconcile this language with Section 1008 of the General Code which provides in part that:

Females over eighteen years of age shall not be employed * * * in connection with any * * * telegraph office, * * * or in the distributing or transmission of messages * * * more than nine hours in any one day except Saturday * * * or more than six days, or more than fifty hours in any one week * * *."

There is no emergency clause and no permissive language of the kind found in the Federal Act. The conclusion is therefore reached that Section 1008 of the General Code and other similar state laws do not apply to the employment of females as telegraph operators on interstate railroads.

SECRETARY OF STATE

NEW CORPORATIONS

The Meadows Farms Co., Orrville, \$50,000. Alton H. Etling, Jacob F. Rehm, Lyman R. Critchfield, W. F. Kean, H. D. Shannon.

The Neal Manufacturing Co., Cleveland, \$1250. Wallace Neal, F. R. Myers, S. Malec, A. Nocar, E. H. Gurus.

The Bond & Mortgage Investment Co., Athens, \$1250. D. H. Moore, S. M. Moore, L. D. Poston, H. L. Benton, H. H. Blackstone.

The Woman's Forum Co., Akron, \$500. Grace A. Curtis, Selena Keys, Arabelle Campbell, Bertha J. Hargrave, Loretta M. McDonough.

The Ideal Land Co., Cleveland, \$10,000. Geo. A. Rutherford, Walter J. Murphy, S. J. Mathews, Leslie Nichols, Henry A. Marting.

The Tri-City Sales Co., Cincinnati, \$25,000. Wm. B. Brune, E. W. Herzog, John Weidhold, H. B. Ritter, Lillie Hudson.

The Ackerman Coal Co., Toledo, \$10,000. Philip M. Ackerman, Oscar B. Ralph, Samuel Z. Kaplan, Freda Ackerman, Samuel R. Harris.

The Kenton Chevrolet Sales Co., Kenton, \$20,000. Albert Williams, Avis Williams, John E. Hanna, Evans Hanna, Soma E. Hanna.

The Pugh Co., Lima, \$10,000. Rav P. Pugh, George L. Pugh, Ralph E. Pugh, George B. Pugh, Ray D. Miller.

The Lima City Street Railway Co.,

Lima, \$750,000. D. J. Cable, C. M. Cable, John L. Cable, F. A. Bundy, Kathryn Werline.

The Home Guarantee Co., Cleveland, \$100,000. S. E. Brewster, C. R. Nickols, F. S. Myers, B. F. Pollack, R. E. Abbott.

The State Surety Savings & Loan Co., Cleveland, \$2,500,000. D. Foster, Charles N. Krieg, M. E. Zimprich, Geo. G. Whitcomb, A. V. Duffy.

The H. L. Braham and Co., Cleveland, \$500,000. Harry L. Braham, Edwards Ritchie, Fred Weiland, W. G. Welbon, E. M. Page.

The Grimes Lock & Hardware Co., Cleveland, \$15,000. Albert E. Rodell, Grant C. Shealy, Edward T. Grimes, Henry D. Grimes, Allen A. Amstutz.

The Industrial Co., Cleveland, \$10,000. I. E. Goodman, Emanuel Levison, Harry Krohngold, Ella B. Goodman, Clementine Levison.

The Central Fruit & Grocery Co., Mansfield, \$175,000. Paul E. Sturges, C. F. Routzahn, R. W. Sturges, Jacob S. Balliet, Helen S. Sturges.

The Capital Finance Co., Ashland, \$2500. R. W. Topping, V. C. Ropp, J. W. Brown, H. E. Budd, M. T. Topping.

The J. Deane Stalter Producing Co., Columbus, \$50,000. J. Deane Stalter, James A. Fitzgerald, A. R. Rader, Ralph Lembeck, H. C. Allread.

The Bay Bridge Beach Co., Sandusky, \$500. E. G. Knoff, C. H. Zimmerman, Ross D. L. Ransom, Perry L. Null, F. A. Martin, C. J. Wagner.

PUBLIC UTILITIES COMMISSION

No. 2530—In the Matter of the Application of The Avon-Sheffield Telephone Company for Authority to Issue Securities. Prayer Granted.

(Dated August 11, 1922.)

This day, it appearing to the Commission from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, this matter came on for consideration upon the application of The Avon-Sheffield Telephone Company, (a corporation duly organized and existing under and by virtue of the laws of the State of Ohio), asking the consent and authority of this Commission to issue and dispose of \$15,000.00 common capital stock, the proceeds arising from the sale thereof to be used:

To discharge certain notes issued to procure moneys with which to finance additions to plant.....	\$4,000.00
To reimburse the treasury for uncanceled, capital expenditures	7,500.00
To provide additions to plant, at an estimated cost of..	3,500.00

The Commission, being fully advised in the premises, finds from the pleadings and exhibits filed herein and its independent inquiry and investigation thereupon:

That, within the five years next preceding the date of the filing of the application herein, and specifically within the period January first, 1919—March thirty-first, 1922, the applicant actually expended from its treasury for the construction of additions, extensions and improvements to its facilities, the sum of \$9942.42, none of which was procured by the issue of stock, bonds, notes or other evidences of indebtedness and the capitalization of which has not heretofore been authorized by order of this Commission:

That the applicant now has under contract or in contemplation certain other additions, extensions and improvements to its facilities, the cost of which, installed, will not be less than the sum of \$5057.58, and

That the issue of applicant's common capital stock of the par value of \$15,000.00 is reasonably required, and the money to be procured thereby, necessary for the reimbursement of applicant's treasury for the aforesaid uncanceled, capital expenditures therefrom, and for the construction, completion, extension and improvement of its facilities,

and is satisfied that consent and authority for the issue and disposition of said common capital stock should be granted. It is, therefore,

Ordered, that said The Avon-Sheffield Telephone Company be, and hereby it is authorized to issue its common capital stock of the par value of fifteen thousand dollars (\$15,000.00), and that said capital stock be sold for the highest price obtainable but not less than the par value thereof. It is further

Ordered, that the proceeds arising from the sale of said common capital stock be, by the applicant, devoted to and used for the following purposes, and no others, to wit:

The reimbursement of its treasury for the moneys not procured by the issue of stock, bonds, notes or other evidences of indebtedness, actually expended therefrom, within the period January first, 1919—March thirty-first, 1922, for additions, extensions and improvements to its facilities not heretofore capitalized or authorized to be capitalized by order of this Commission, \$9942.42.

The payment of the cost of other additions, extensions and improvements to its facilities, provided and to be provided subsequent to March thirty-first, 1922, the cost of which has been estimated at \$5057.58.

It is further

Ordered, that the applicant make verified report to this Commission, semi-annually, within fifteen days after the close of each calendar, semi-annual period, of the issue and disposition of capital stock and, in full detail, the expenditure of the proceeds thereof pursuant to the terms and conditions of this order.

3

No. 2635—In the Matter of the Application of The Norwalk and Shelby Railroad Company to Issue Stocks and Bonds. Prayer Granted.

(Dated August 17, 1922.)

This day, after full hearing, due notice of the time and place of which was given to all parties in interest, this matter came on for consideration upon the application, as amended, of The Norwalk and Shelby Railroad Company, (a corporation duly organized and existing under and by virtue of the laws of the State of Ohio), asking the consent and authority of this Commission to issue and dispose of common capital stock of the par value of \$125,000.00, first mortgage, seven per cent. notes of the principal sum of \$35,000.00, and second mortgage, eight per cent., ten year bonds of the principal sum of \$150,000.00, to enable the applicant to acquire

and convert to auto-motive equipment operation the line of railway formerly owned and operated as an electric interurban railway by the former The Sandusky, Norwalk and Mansfield Electric Railway Company, whose property was sold at judicial sale under order of the United States District Court.

The Commission, being fully advised in the premises, finds from the pleadings and exhibits filed herein, the evidence offered at the hearing thereupon and its independent inquiry and investigation thereupon:

That, for purchase and sale purposes, the right of way and the facilities thereupon situated, composing the line of railroad at one time owned and operated by The Sandusky, Norwalk and Mansfield Electric Railway Company, as improved by the expenditure of the sum of \$10,000.00, for the purposes disclosed at the hearing herein, are worth not less than the sum of \$200,000.00;

That the applicant has incurred organization and other preliminary expenses of the sum of \$8000.00;

That the applicant has in contemplation or under contract, the purchase of three automotive passenger cars and one automotive freight car, the cost of which will be the sum of \$78,000.00;

That the applicant, in the prosecution of its corporate purposes will require a working capital of \$10,000.00;

That the issue of applicant's said common capital stock, first mortgage notes and second mortgage bonds is reasonably required and the money to be procured thereby, necessary for the acquisition of property, the construction, completion, extension and improvement of facilities, and the maintenance and improvement of service, and

That, the applicant proposing to issue common capital stock of the par value of \$125,000.00 and first mortgage notes and second mortgage bonds of the total principal sum of \$185,000.00, the issue of \$60,000.00, principal sum, of said bonds in excess of its issued and outstanding capital stock and the expenditure of the proceeds thereof, as such excess, should be specifically consented to, authorized and approved,

and is satisfied that consent and authority for the issue and disposition of said common capital stock, first mortgage notes and second mortgage bonds should be granted. It is, therefore,

Ordered, that said The Norfolk and Shelby Railroad Company be, and hereby it is authorized to issue its common capital stock of the par value of one hundred and twenty-five thousand dollars (\$125,000.00), its first mortgage, seven per cent. promissory notes of the total principal sum of thirty-five thousand dollars (\$35,000.00), twelve thousand, five hundred dollars (\$12,500.00), prin-

principal sum whereof shall mature, respectively, in one and two years from date thereof, and the remaining ten thousand dollars (\$10,000.00), principal sum whereof shall mature in three years from date, and its second mortgage, eight (8) per cent. ten (10) year bonds of the principal sum of one hundred and fifty thousand dollars (\$150,000.00); and that twenty-five thousand dollars (\$25,000.00) par value of said common capital stock shall be sold for the best price obtainable but not less than the par value thereof, and one hundred and forty thousand dollars (\$140,000.00) principal sum of said second mortgage bonds shall be sold for the best price obtainable but not less than ninety (90) percentum of the principal sum thereof. It is further

Ordered, that any discount arising from a sale of said bonds for less than the principal sum thereof shall be authorized pursuant to the rules and regulations heretofore prescribed by this Commission. It is further

Ordered, that the issue and disposition of sixty thousand (\$60,000.00) principal sum of said bonds in excess of applicant's issued and outstanding capital stock, and the expenditure of the proceeds thereof, as such excess, as hereinafter provided, be, and hereby they are specifically consented to, authorized and approved. It is further

Ordered, that said common capital stock, first mortgage notes and second mortgage bonds be issued and disposed of, or the proceeds arising from the sale thereof, expended for the following purposes, and no others, to wit:

\$100,000.00, par value of said common capital stock, \$10,000.00 principal sum of said second mortgage bonds and the sum of \$55,000.00 from the proceeds of the sale of the remainder of said bonds, to be issued and delivered, at par, and paid to one J. L. Baugh as the full and final consideration for all of the right of way and the railroad thereupon situated and other property, by him held, composing the line of railway formerly operated as an electric interurban railroad by The Sandusky, Norwalk and Mansfield Electric Railway Company, (as more fully described and enumerated in the detailed appraisal thereof offered as an exhibit upon the hearing hereof, which exhibit hereby is made a part of this order by reference, subject to an indebtedness of \$35,000.00; as improved by \$10,000.

\$35,000.00, principal sum, of said first mortgage notes to be issued and delivered to The Wilkoff Company in evidence of applicant's indebtedness aforesaid, subject to which it will acquire the said property so to be purchased from the said J. L. Baugh, and

The balance of the proceeds arising from the sale of said bonds to be expended for the following purposes, viz:

The payment of organization and other preliminary expenses	\$ 8,000.00
The purchase of three passenger and one freight auto-motive cars	78,000.00
To be used as working capital.....	10,000.00

It is further

Ordered, that the applicant make verified report to this Commission, semi-annually, of the issue and disposition of said capital stock, first mortgage notes and second mortgage bonds, and, in reasonable detail, the expenditure of the proceeds thereof, pursuant to the terms and conditions of this order. It is further

Ordered, that the finding hereinbefore set forth as to the value of said property, to be acquired by the applicant, shall not be binding upon this Commission in any future proceedings involving rates and/or service.

✽

No. 2627—In the Matter of the Sale by R. J. Berry of the Bowerstown, Ohio, Gas Franchise and Certain Gas Wells and Equipment Used in Connection With the Exercise of Said Franchise, to S. M. Elliott, of Bowerstown, Ohio. Prayer Granted.

(Dated August 19, 1922.)

This day, it appearing to the Commission from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, this matter came on for consideration upon the joint application of R. J. Berry and S. M. Elliott, asking the consent to, and approval, by this Commission of the sale by said first named applicant, and the purchase by the latter, of all the property, rights and other assets composing the natural gas plant heretofore owned and operated by the said R. J. Berry, furnishing natural gas service in and about the village of Bowerstown, Ohio.

The Commission, being fully advised in the premises, finds from the pleadings and exhibits filed herein and its independent inquiry and investigation thereupon:

That, for purchase and sale purposes, the value of said property, rights and other assets composing the said natural gas plant at Bowerstown, Ohio, is not less than the sum of \$10,000.00, and

That the public will, upon such sale and purchase of said public utility property, be furnished adequate service for a reasonable and just rate, rental, toll or charge therefor,

and is satisfied that consent and authority for said sale and purchase of such public utility property should be granted. It is, therefore,

Ordered, that the said R. J. Berry be, and hereby he is authorized to sell and convey to S. M. Elliott, of Bowerstown, Ohio, all of the property, rights and other assets composing the natural gas plant furnishing natural gas service in and about the village of Bowerstown, Ohio, as more fully described and enumerated in the application and accompanying exhibits filed herein, which hereby are made a part of this order by reference; and the said S. M. Elliott hereby is authorized to purchase and acquire the same, and to pay therefor the agreed consideration of \$10,000.00. It is further

Ordered, that, forthwith upon the exercise of the authority herein granted, said parties file with this Commission schedules providing for their respective withdrawal from and inauguration of service within the territory now served by means of said property. It is further

Ordered, that nothing herein shall be construed to be a consent to or approval, by this Commission, of any increase in rates or diminution of service within the territory now served by means of said property, nor shall the findings hereinbefore set forth as to the value of said property, rates and service, or the acquiescence in the passing of said agreed consideration be binding upon this Commission in any future proceeding involving rates and/or service.

✽

No. 2614—In the Matter of the Application of The Grand River Electric Light and Power Company for Consent and Authority to Issue \$50,000.00 Common Capital Stock. Prayer Granted.

(Dated August 10, 1922.)

This day, after due notice to all parties in interest, this matter came on to be heard, and was heard, upon the application of The Grand River Electric Light and Power Company, (a corporation duly organized and existing under and by virtue of the laws of the state of Ohio), asking the consent and authority of this commission to issue and dispose of common capital stock of the par value

of \$50,000.00, the proceeds arising from the sale thereof to be used to construct and equip a system for the transmission and distribution of electricity for public and private use in the townships of Ashtabula, Plymouth, Saybrook and Austinburg and Morgan, Ashtabula county, Ohio, and the objections thereto.

The commission, being fully advised in the premises, finds from the pleadings and exhibits filed herein and the testimony offered at the hearing thereupon:

That the applicant has in contemplation the construction and equipment of a line for the transmission of electrical energy, to be purchased from the Ashtabula, Ohio, municipal plant, into and the distribution of the same for public and private use, in Ashtabula, Plymouth, Saybrook, Austinburg and Morgan townships, Ashtabula County, Ohio, the cost of which has been estimated at the sum of \$59,100.00, and

That the issue of applicant's common capital stock of the par value of \$50,000.00 is reasonably required and the money to be procured thereby, necessary for the construction, completion, extension and improvement of its facilities as aforesaid,

and is satisfied that consent and authority for the issue and disposition of said capital stock should be granted. It is, therefor,

Ordered, That said The Grand River Electric and Power Company be, and hereby it is authorized to issue its common capital stock of the par value of fifty thousand dollars (\$50,000.00), and that said capital stock be sold for the highest price obtainable but not less than the par value thereof. It is further

Ordered, That the proceeds arising from the sale of said capital stock be, by the applicant, devoted to and used for the following purposes, and no other, to wit: The construction and equipment of a system for the transmission of electrical energy procured from the Ashtabula, Ohio, municipal plant, into and the distribution thereof, for public and private use, in the townships of Ashtabula, Plymouth, Saybrook, Austinburg and Morgan, Ashtabula county, Ohio, as more fully described in the detailed statement appended, as Exhibit A, to the application herein, which exhibit hereby is made a part of this order by reference, the total cost of which, therein, is estimated at the sum of \$59,100.00. It is further

Ordered, That the applicant make verified report to this commission, semi-annually, within fifteen days after the close of each calendar, semi-annual period, of the issue and disposition of said capital stock and, in reasonable detail, the expenditure of the proceeds thereof pursuant to the terms and conditions of this order.

No. 2609—In the Matter of the Application of J. H. McCray, Doing Business as The College Corner Light and Power Company, to Abandon Electrical and Power Service in the Village of College Corner, Ohio. Prayer Granted.

(Dated August 11, 1922.)

This day, after full hearing, due notice of the time and place of which was given by publication and otherwise, as provided by law, to all parties in interest, this matter came on for final consideration upon the pleadings, the evidence and exhibits offered at said hearing, and the argument of counsel.

The commission being fully advised in the premises, and having due regard for the welfare of the public as well as the cost of maintaining and operating applicant's utility and service, finds that said utility has been operated and said service furnished for more than five years and that said proposed discontinuance of service and abandonment of property is reasonable, and is satisfied that consent and authority for the discontinuance of applicant's service and the permanent abandonment of its facilities should be granted. It is, therefore,

Ordered, That the said J. H. McCray, the owner and operator of the electrical utility furnishing electrical service for light and power in the village of College Corner, Ohio, under the trade name of The College Corner Light and Power Company, be, and hereby he is authorized, effective September eleventh, 1922, to discontinue the furnishing of such electrical service and to permanently abandon the facilities used in connection therewith.



No. 2419—In the Matter of the Joint Application of The Williams County Telephone Company, (Incorporated 1921), and The Citizens Telephone Company of West Unity, Ohio, for Authority to Purchase and Sell Property. Prayer Granted.

(Dated August 18, 1922.)

This day this matter came on for consideration upon the joint application of The Citizens Telephone Company, a corporation duly organized and existing under and by virtue of the laws of Ohio with its principal place of business at West Unity, Ohio, and The Williams County Telephone Company, a corporation duly organized, in the year 1921, and existing under and by virtue of the laws of

the state of Ohio, asking the consent to and approval by this commission of the sale, by said first named applicant, and the purchase by the latter of all the property rights and other assets of said The Citizens Telephone Company.

And the Commission, coming now to value the property of said The Citizens Telephone Company used and useful for the convenience of the public in the furnishing of telephonic service, and after considering the inventory of its said property filed herein by said applicant, the evidence and exhibits, and having completed and inventory and valuation of said property, and being fully advised in the premises:

The commission finds and ascertains the value of the several classes and kinds of property of The Citizens Telephone Company of West Unity, Ohio, used and useful for the convenience of the public in the furnishing of telephonic service, and of said property as a whole, as of November first, 1921, to be as set forth in the following summary, viz.:

THE CITIZENS TELEPHONE COMPANY

West Unity, O., Rural

Final Summary by Accounts

Acct.	Description	Wear and Tear Amount	%	Obsolescence Amount	Present Value
207	Right of Way.....	\$ 975.53			\$ 975.53
221	Central Office Telephone Equip- ment	3,019.85	19.7	595.78	2,424.07
222	Other Equipment of Central Office	250.35	28.8	72.20	178.15
231	Station Apparatus.....	8,001.47	9.0	720.13	7,281.34
232	Station Installations.....	1,872.25	9.0	168.50	1,703.75
235	Booths and Special Fittings.....	50.47	20.0	10.09	40.38
241	Exchange Pole Lines.....	17,402.46	43.5	7,571.27	9,831.19
242	Exchange Aerial Cable.....	2,176.37	17.4	378.62	1,797.75
243	Exchange Aerial Wire.....	9,841.10	43.4	4,269.33	5,571.77
245	Exchange U. G. Cable.....	772.28	1.2	9.56	762.72
251	Toll Pole Lines.....	3,243.23	47.6	1,543.88	1,699.35
253	Toll Aerial Wire.....	782.22	44.5	347.74	434.48
261	Office Furniture and Fixtures.....	472.25	20.0	94.45	377.80
264	General Stable and Garage Equip.....	592.00	50.0	296.00	296.00
265	General Tools and Implements.....				
	Plant Supervision, Tool and Supply Expense	80.65	30.0	24.20	56.45
		2,006.07		652.12	1,353.95
	Total Physical Property.....	\$51,538.55	32.5	\$16,753.87	\$34,784.68
	Preliminary Organization, General, Legal and Engineering.....	824.62			824.62
	Organization, General, Legal and Engineering Supervision, Ac- counting contingencies Casualties, Omissions, Taxes and Interest During Reproduction.....	6,596.93	32.5	2,144.50	4,452.43
	Total Overhead Values.....	\$ 7,421.55	28.8	2,144.50	5,277.05
	Working Capital, Including Supplies	1,855.39			1,855.39
	Grand Total.....	\$60,815.49	31.1	\$18,898.37	\$41,917.12

It is, therefore,

Ordered, That notice of such valuation so placed upon said property be transmitted, by registered letter, to said The Citizens Telephone Company, of West Unity, Ohio, and to the mayor of West Unity, Ohio; all as provided for under Section 499-12 of the General Code of Ohio. It is further

Ordered, That all inventories, valuations, transcripts and exhibits be filed and considered as a part of the record herein. It is further

Ordered, That the commission reserve the right, in the event it shall determine the aforesaid inventory to be incomplete and inaccurate, or that said valuation is incorrect, to make such changes therein as may be necessary before said tentative valuation shall become final.

ATTORNEY GENERAL

Where a Village School District and a Rural School District Unite to Maintain a Joint High School to be Conducted by a Committee in Accordance with 7670, G. C., Such Union of Districts is for High School Purposes Only and the Superintendent or Principal Employed Cannot be Employed for Supervision Purposes Other Than the Supervision of the Joint High School so Created. Where the Provisions of Section 4740, G. C., (109 O. L., 243), Cannot be Harmonized with Section 7670, G. C., and the Joint High School Statutes, as Amended in Senate Bill 100, 109 O. L., 373, the Provisions of the Joint High School Statutes Will Govern.—When a 4740 District and a Rural District Unite Under 7669, G. C., for Joint High School Purposes, Such 4740 District Loses its Statue as a 4740 District and the Superintendent or Principal Employed in Such Joint High School Would be Employed in Accordance with 7670 by the High School Committee Conducting Such Joint High School.—Where a Rural District and an Exempted Village District Unite Under 7669, G. C., for High School Purposes, the Exempted Village District is Not Required to Have the Sanction of the County Superintendent of Schools in the Employment of the Superintendent of the Exempted Village District.

No. 3287—(Opinion Dated, July 1, 1922.)

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

Gentlemen: Acknowledgment is made of the receipt of your request for the opinion of this department on the following questions:

“1. In case a village school district and a rural school district unite to maintain a joint high school to be conducted by a committee in accordance with Section 7670, G. C., may the village district upon nomination by the county superintendent, and the rural district also upon nomination by the county superintendent, employ the same person as superintendent, such superintendent to give one-half of his time to the joint high school, one-fourth of his time to the supervision of the village elementary schools, and one-fourth of his time to the supervision of the elementary school of the rural district, in each instance the assumption being that the employment is authorized by Section 4740 of the General Code?

2. When a 4740 district and a rural district unite under Section 7669, G. C., must the superintendent be employed in accordance with Section 4740 of the General Code?

"3. If a rural district and an exempted village district unite under Section 7669, G. C., for high school purposes, must the village district employ a superintendent with or without action by the county superintendent?"

In answering your first question attention is invited to the fact that Section 4740, G. C., prior to August 16, 1921, and as amended in 107 Ohio Laws, page 622, reads as follows:

"Any village or wholly centralized rural school district or union of school districts for high school purposes which maintains a first grade high school and which employs a superintendent shall upon application to the county board of education before June 1st of any year be continued as a separate district under the direct supervision of the county superintendent until the board of education of such district by resolution shall petition to become a part of a supervision district of the county school district. Such superintendents shall perform all the duties prescribed by law for a district superintendent, but shall teach such part of each day as the board of education of the district or districts may direct."

As long as 4740 G. C., read as above there was little conflict with 7670, G. C. (99 Ohio Laws) which read, and still reads, as follows:

"Any high school so established shall be under the management of a high school committee, consisting of two members of each of the boards creating such joint district, elected by a majority vote of such boards. Their membership of such committee shall be for the same term as their terms on the boards which they respectively represent. Such high school shall be free to all youth of school age within each district, subject to the rules and regulations adopted by the high school committee, in regard to the qualifications in scholarship requisite for admission, such rules and regulations to be of uniform operation throughout each district." (99 O. L., p. 462.)

Old Section 4740, G. C., (107 Ohio Laws) referred to "supervision district" and hence when the Kumler-Gorrell act became a law it was necessary to change Section 4740, G. C., in some manner because supervision districts within the county school district were abolished by that act (substitute Senate Bill 200). Section 4740, G. C., which appears in the General Code today seems to have been taken from one of the number of bills before the 84th General Assembly, the purpose of which was to abolish district super-

vision and also elect by popular vote members of the county board of education.

In comparing Section 4740, G. C., as amended in 109 Ohio Laws, page 243, with Section 7670, G. C., there is great difficulty in harmonizing the two sections, and it would appear that Section 4740, G. C., as it now exists was apparently passed without any regard whatever for the plain provisions of Section 7670, G. C., the section bearing upon the manner of conducting a joint high school, for Section 4740 as amended in 109 Ohio Laws, page 243, reads as follows:

"Any village or wholly centralized rural school district or union of school districts for high school purposes which maintains a first grade high school and which employs a superintendent upon the nomination of the county superintendent shall upon application to the county board of education before June first of any year be placed under the supervision of the county superintendent. Such superintendents shall be employed by the local boards of education upon the nomination of the county superintendent, but the local board of education, by a majority vote of its full membership, may employ a superintendent not so nominated. Such superintendent shall perform the duties prescribed by law for assistant county superintendents, but shall teach for such part of the day as the board of education of the district or districts may direct."

Section 7670, G. C. (99 Ohio Laws, p. 462) supra, provides that the joint high school as soon as established shall be under the management of a high school committee consisting of two members of each of the boards creating such joint district, elected by a majority vote of such boards. Prior to the amendment of Section 4740 in 109 Ohio Laws, it was generally conceded and had been frequently held by this department that this high school committee employed the principal and teachers for the joint high school as well as doing all other things necessary in the successful conduct of such high school, in the same manner as if a local board of education would conduct its own high school. Thus it has been held in prior opinions of this department as follows:

"With the exception of the power reserved by provision of Section 7672, G. C., to the board of education of each of the school districts comprising the union for high school purposes, to levy a tax and set aside the proceeds of such levy as a separate fund for the maintenance of said high school, the joint high school committee when properly elected under authority and in compliance with the requirement of Section 7670, G. C., exercises the same powers and performs the same duties in connection with said high school as are exercised

and performed by the board of education of a school district which maintains its own high school." (1916 Opinions of Attorney General, Vol. I, p. 772.)

(The above was affirmed in practically the same language in an opinion of this department, appearing at page 466, Vol. I, Opinions of the Attorney General, 1920.)

"When a joint school district is formed for high school purposes by a rural school district, and an adjoining village school district, such combined territory becomes one district for high school purposes, and taxes levied for the purchase of a school site and the erection of the school building, and the support of such joint high school thereafter must be borne by the respective joined districts in proportion to the total valuation of the property in each, notwithstanding the fact that the village district has the smallest valuation and sends the most pupils." (1919 Opinions of the Attorney General, Vol. I, p. 483.)

"The high school committee in charge of a joint high school, operated by two or more school districts, must be governed in its disbursement of moneys from the tuition fund by the limitations set forth in Section 7595-1, G. C." (1919 Opinions of the Attorney General, Vol. I, p. 750.)

The following significant language occurs on page 303 of Vol. II, Opinions of the Attorney General, 1920 relative to the manner of conducting a joint high school and the authority of the high school committee:

"It must not be forgotten that the member districts of the joint high school district do not themselves conduct the high school. As Section 7670 expressly provides, the authority in charge of the joint high school is a high school committee elected by the members of the respective boards of education. This committee employs the principal and teachers and otherwise manages and conducts the joint high school. The expense incurred by such committee is then to be contributed, subject to the qualifications already pointed out, by the member districts. These things being true, it cannot be said that either district is the employer of the principal and teachers, so that an unsatisfied claim for the salary of any such principal or teacher could not be said to be an indebtedness of either district. In order to reach this conclusion it is necessary, of course, to reject the theory of agency or partnership. Such a theory would be worked out by holding that the joint high school committee is an agent of both boards of education, so that the obligations which it incurs are claims against both in the same sense in which the agent of a partnership might create claims against both partners for which either would be liable. Such a theory, however, can not be applied to boards

of education in the absence of express statutory provision. The statutes which exist, interpreted as they have been by the courts, are not open to such construction. The joint high school committee is without power to incur obligations against either board. The result is, as previously stated, that the indebtedness of the joint high school committee is not the indebtedness of either school district for which money may be borrowed under Section 5656 of the General Code."

While the principal or superintendent of the joint high school formerly was employed by the high school committee selected from the respective several boards of education forming the joint high school district, Section 4740 was amended in 109 Ohio Laws *supra* so as to provide that such superintendents (that is in a union of school districts for high school purposes which has become a 4740 district) "shall be employed by the local board of education upon the nomination of the county superintendent," and thereafter when so chosen "shall perform the duties prescribed by law for assistant county superintendents, but shall teach for such part of the day as the board of education of the district or districts may direct."

In your inquiry you indicate that a village school district and a rural school district united to maintain a joint high school (under Section 7669, G. C.) would be conducted by a committee under Section 7670, but that thereafter the employment of a superintendent for such joint high school was carried out in the manner "authorized by Section 4740 of the General Code." There are frequent instances where a village school district and a rural school district will join under Section 7669, G. C., in the establishing and maintaining of a joint high school, but this of itself does not make such joint high school district a 4740 district at all. In order to become what is known as a 4740 district, it is necessary that the steps mentioned in Section 4740 be taken, and the requirements appearing in such section be fully complied with. A village school district and a rural school district which had united in maintaining a joint high school, can attain a 4740 status only by virtue of this union. Therefore if the village school district and the rural school district which you describe as having united under Section 7669, G. C., to conduct a joint high school under Section 7670, G. C., thereafter took the steps necessary to make such "union of school district for high school purposes" into a 4740 district, then the rights and privileges which run under Section 4740, G. C., as recently amended might apply, since Section 4740 as amended in 109 Ohio Laws is a later enactment than

Section 7670, G. C., (99 Ohio Laws, p. 462). Section 4740 closes with the language that "such superintendent shall perform the duties prescribed by law for assistant county superintendents, but shall teach for such part of the day as the board of education of the district or districts may direct."

A careful survey of all of the school laws upon supervision indicates that as far as the county school district is concerned, it was not intended that rural school districts should have more supervision of their elementary schools than that which obtains under the county superintendent of schools and his assistants. Thus it was held in an opinion of this department, appearing at page 684, Opinions of the Attorney General, Vol. I, 1921, that a local board of education was without authority to elect a superintendent of schools under the general language of Section 7690, G. C., since the General Assembly had already provided for county supervision of schools by a county superintendent and such assistants as might be elected by a county board of education. Again it was held by this department on May 24, 1918, in Opinion No. 1236, appearing at page 735, Vol. I, 1918 Opinions of the Attorney General that "When districts are united for high school purposes, that act alone does not unite such district for supervision purposes." However, Section 4740, G. C., has been amended, as indicated above, in 109 Ohio Laws, p. 243, since the issuing of this opinion in 1918.

In practical life Section 4740, as it now reads, does not fit at all into the scheme detailed in Section 7670, G. C., as to the conduct of a joint high school. If the superintendent employed in a joint high school district which has become a 4740 district is employed by the several boards of education, then he cannot be employed by a high school committee as has long been the plan under Section 7670, G. C.; if his employment calls for one-half of his time to be given to the joint high school, one-fourth of his time to the supervision of the village elementary schools, and one-fourth of his time to the supervision of the elementary schools of the local district, it would appear that the joint high school committee under Section 7670, G. C., which has the "management of the high school" has very little authority at all in the conduct of this joint high school. In other words, this language of Section 4740, G. C., is practically unworkable when compared with the joint high school sections and the supervision details in other sections of the law since the question would be sure to arise as to just who had control of this superintendent since he was employed by the respective

boards of education with a schedule of hours arranged by the boards of education rather than the joint high school committee. It can hardly be conceived that it was intended by the law making body that this superintendent or principal of a joint high school established under Section 7669, G. C., should thereafter under another section of the law give but one-half of his time to such high school and the rest of it in supervision of elementary schools which schools had already been given supervision under the county superintendent of schools and his assistants. In other words, the union of school districts under Section 7669, G. C., is for high school purposes only and the supervision which is referred to in the law by referring to the duties of the assistant county superintendents means only that supervision of the joint high school and not the supervision of any rural schools in the district.

In your second question you desire to know whether in a case where a 4740 district and a rural district united under Section 7669, G. C., must the superintendent be employed in accordance with Section 4740, G. C. The answer to this is that even though the village district had been a 4740 before it united with the rural district for joint high school purposes, it lost its 4740 status immediately upon consummation of this union. Thus it was held in the opinion of the Attorney General (No. 1236) issued on May 24, 1918, as follows:

"A district which exists under Section 4740, G. C., and which unites with an adjoining district for high school purposes, cannot longer exist under said Section 4740."

The reason for this appears in Section 4740, G. C., one of the requirements of which is that to be a 4740 district, the district must conduct a first grade high school and the 4740 district which became part of the joint high school district would not be conducting a first grade high school by itself as a district since such first grade high school would thereafter be maintained by the joint high school district and not by the old 4740 district. So that if a 4740 district and a rural district united under Section 7669, G. C., the superintendent or principal employed in such joint high school would be employed in accordance with Section 7670, G. C., that is, by the high school committee conducting the joint high school.

In the third question you desire to know if a rural district and an exempted village district unite under Section 7669, G. C., for high school purposes, must the exempted district employ a superintendent with or without action by the county superintendent?

An exempted village district is a village school district which

has taken advantage of the provisions of Section 4688, G. C., that is, upon establishing a population of three thousand or more, the village school district can be made exempt from the supervision of the county superintendent of schools and thus not under authority of the county board of education. It would appear to be rather a rare case where an exempted village school district would be compelled to join with a rural school district in the support of a joint high school since a village with three thousand population or more is usually wealthy enough to conduct a first grade high school of its own, which it does and then charges tuition to the pupils from surrounding districts who attend the first grade high school of the exempted village district. The fact that the cases are rare may be the reason that the law does not make an explicit mention as to what should obtain in a case of this kind. Clearly the exempted village school district does not have to employ its superintendent upon any action of the county superintendent and it cannot be conceived that by merely joining with a rural school district for high school purposes that the exempted village school district would then be compelled to employ its superintendent upon the nomination of the county superintendent. It is true that Section 7705 provides that the board of education in each rural school district shall employ no teacher for any school unless such teacher is nominated by the county or assistant county superintendent (except by majority vote) but this section does not run to the new school district known as the exempted village school district and the word "teacher" is used instead of "superintendent." If an exempted village school district and a rural school district unite under Section 7669, G. C., for high school purposes, the employment of the personnel in such joint high school would be by the joint high school committee mentioned in Section 7670, G. C.

A union of a local district and an exempted village district under Section 7669, G. C., for high school purposes, would not constitute a 4740 district by virtue of that union. Therefore such a district could not employ such a superintendent for the reason that only a 4740 district may employ a superintendent. An exempted village district would doubtless have a superintendent, but his employment is outside the jurisdiction of the county superintendent of schools.

In considering these questions it is worthy of notice that while the General Assembly amended 4740, G. C., in the manner above indicated, the same General Assembly also amended and supplemented the sections of law under which joint high school dis-

tricts are operated. The sections under which joint high schools are operated are 7669, 7670, 7671, 7671-1, 7671-2 and 7672 of the General Code. In Senate Bill 100 passed by the 84th General Assembly, Section 7669 and 7672 were amended, while Section 7671-1 and 7671-2 were added as supplemental sections in order to clarify and strengthen the joint high school statutes, one of the corrections being a provision for the dissolution of the joint high school district for which no law had existed prior thereto. It is true that 7670, G. C., one of the joint high school sections, was not disturbed, Senate Bill 100 starting with 7669, G. C., and ending with 7672, G. C., of the joint high school statutes. Here is a practical indication in the strengthening of the joint high school statutes and leaving 7670 without any change, that the General Assembly was satisfied with old 7670, in the manner in which it operated in having a joint high school conducted under the management of a high school committee.

Section 4740, G. C., to which you refer, is a part of the Kumler-Gorrell law and was filed in the office of the secretary of state on May 17, 1921, while Senate Bill 100, clarifying and strengthening the joint high school statutes, was filed in the office of the secretary of state on May 19, 1921, that is, two days thereafter. Senate Bill 100 did not contain any amendment to 7670, G. C., of the joint high school statutes (and the section to which you refer) but 7670 is practically the keystone of the joint high school statutes, starting with 7669 and ending with 7672, G. C.; that is to say, the joint high school statutes would be unworkable in consummating what was intended if the provisions of 7670, G. C., did not obtain, for Section 7670 is the section which provides for the management of the high school, the requirements as to entry to such school and the provisions for rules and regulations for the government of the joint high school; without these things there would be no functioning in a joint high school district.

In reply to the questions submitted, then, you are advised that it is the opinion of this department:

(1) Where a village school district and a rural school district unite to maintain a joint high school to be conducted by a committee in accordance with 7670, G. C., such union of districts is for high school purposes only and the superintendent or principal employed cannot be employed for supervision purposes other than the supervision of the joint high school so created. Where the provisions of Section 4740, G. C., (109 O. L., 243) cannot be harmonized with Section 7670, G. C., and the joint high school statutes,

as amended in Senate Bill 100, 109 O. L., 373, the provisions of the joint high school statutes will govern.

(2) When a 4740 district and a rural district unite under 7669, G. C., for joint high school purposes, such 4740 district loses its status as a 4740 district and the superintendent or principal employed in such joint high school would be employed in accordance with 7670 by the high school committee conducting such joint high school.

(3) Where a rural district and an exempted village district unite under 7669, G. C., for high school purposes, the exempted village district is not required to have the sanction of the county superintendent of schools in the employment of the superintendent of the exempted village district.

*

Two Aged Persons, Husband and Wife, Conveyed Real Estate While in Fair Health to a Church, Reserving an Annuity Therein, Held, Under the Facts That Such Conveyance is not Subject to Inheritance Tax After the Death of Both Grantors.

No. 3372—(Opinion Dated July 21, 1922.)

Tax Commission of Ohio, Columbus, Ohio.

Gentlemen: The commission has requested the opinion of this department as follows:

"On March 2, 1920, Catherine T. (aged 75 years), who was the owner of the fee, and Peter T. (aged 79 years), her husband, by deed of general warranty conveyed certain real estate to Church for general church purposes, the consideration being that said church would pay said grantors the sum of \$20.00 per month during their joint lives and the life of the survivor. Both grantors at the time of the conveyance were in fair average health but Catherine died in March, 1921, and her husband in December following. The property conveyed was fairly worth \$4,500.00 and had a fair rental value of \$25.00 per month. According to the usual method of computation the present value of the annuity to be paid by the church on the prospective lives of the grantors, at the date of the conveyance was \$1,382.50. The actual amount paid by way of such annuity was only \$440.00.

In the facts as stated, is the succession to this property subject to the inheritance tax?"

In the opinion of this department, the succession to this property is not subject to inheritance tax. The succession occurred by conveyance inter vivos. It apparently took effect in possession

and enjoyment immediately. That is to say, there is nothing in the statement of facts to show that the couple in question continued in the occupation and enjoyment of the premises conveyed during the remainder of their lives. They merely sold and yielded possession of the premises for a consideration, which in this instance, was an annuity, payable monthly.

Section 5332, paragraph 3, of the General Code, reads as follows:

"When the succession is to property from a resident, or to property within this state from a non-resident, by deed, grant, sale, assignment or gift, made without a valuable consideration substantially equivalent in money or money's worth to the full value of such property:

(a) In contemplation of the death of the grantor, vendor, assignor, or donor, or

(b) Intended to take effect in possession or enjoyment at or after such death."

The remarks already made show that sub-paragraph (b) of the above quotation cannot be applied. The only question, therefore, arises under the general clause and sub-paragraph (a). Do the facts show this to have been a deed made without a valuable consideration substantially equivalent in money or money's worth to the full value of the property, and in contemplation of the death of the grantors?

The present value of the annuity, according to the mortality tables, is stated by the commission to be less than one-third of the value of the whole estate. It may be, therefore, taken as true without regard to the actual amount paid, which is much less than the theoretical value of the consideration, that such consideration was not substantially equivalent "in money or money's worth to the full value of such property." This leaves for consideration the question as to whether the fact that a life annuity constitutes the consideration for the property, coupled with the advanced age of the grantors, make this a transfer in contemplation of the death of the grantors. This phrase is defined in the inheritance tax law, Section 5331, paragraph 5, as follows:

"'Contemplation of death' means that the expectation of death which actuates the mind of a person on the execution of his will."

The commission states the fact that both grantors were in fair average health at the time of the conveyance, so that as above stated, we have nothing but the nature of the consideration and

the age of the grantors as evidence of contemplation of death.

It has been held that advanced age of itself is not sufficient evidence of contemplation of death. In *re Dessorts Estate* (Wis.) 142 N. W., 647.

The statute erects no presumptions whatever, either on the footing of the age of the grantor, his conditions of health, the time which elapses between the conveyance and his demise, or on any other footing; but requires that in cases of this character, it be established that the disposition was actuated by the expectation of death which fills the mind of a person on the execution of his will. What constitutes evidence of a substantial testamentary disposition is therefore left to the general principles of the law of evidence; and the question becomes one as to the competency and sufficiency of certain objective facts as constituting proof of a substantial testamentary intent.

Thus in New York it has been held in a series of cases which have been commented upon in other opinions, that a transfer inter vivos upon trusts which are completely revocable and amendable by the trustor during this life time, is a transfer in contemplation of death, because it shows the ambulatory attitude of mind that characterizes the intention of a person upon the execution of a will. The cases do not universally require such evidence of intention to control the disposition of the estate up to the moment of death; so that in case of a gift *causa mortis*, statutes like this have been applied, and even where a person in failing health, especially if he be of advanced age, makes a general distribution of his property by irrevocable conveyance inter vivos, the courts have found evidence of the requisite intent to constitute contemplation of death.

So also the fact that the disposition of this character is substantially donative is a fact which is always entitled to weight. In this case, though the consideration is not adequate measured by the mortality tables, and though it turned out to be even more inadequate in fact than it would have been had the grantors lived out their respective expectancies of life, yet the transfer was not a pure donation, nor even substantially so in the sense required to furnish cogent proof of contemplation of death.

The following cases have been found in which courts have been called upon to consider transfers inter vivos made upon consideration of contracts for support and the like:

People v. Burkhalter, 247 Ill., 600;
Re: Edgerton, 64 N. Y. Supp. 700.

Of course, in a sense the disposition looks forward to the death of the grantors in that the consideration is an annuity for their lives and that of the survivor of them. But in the absence of any showing to the effect that an evasion of the inheritance tax law was attempted, it is not believed that the evidence afforded by the facts stated by the commission would be sufficient to establish the quasi testamentary intention which the statute requires.

In order to bring the case out in bold relief, suppose it be assumed that the conveyance was an out and out gift. Unless the property constituted practically the whole estate of the donors, or they were at the time in failing health with consciousness of shortly impending death, or proof were available of conferences, negotiations, etc., looking to means of evasion of the inheritance tax law, or means of preventing the property from falling into the hands of some heir at law distasteful to the donors, a conveyance in contemplation of death could probably not be established. In this case there is a consideration which was theoretically inadequate at the time and turned out to be actually much more so. Yet, it was of a speculative nature, and it might conceivably have turned out to be more than adequate; that is, the church may have had to pay before the death of the survivor of the grantors a sum in excess of the value of the premises, though the younger of the two grantors would have had to attain the advanced age of ninety-four years in order to bring about such a result. Of course, the decision of a question of this kind cannot be arrived at as a proposition of strict law. The question in the last analysis is one of fact. The fact to be established is subjective and defies demonstration. The question is, what was the actual state of mind of these two aged persons? This can only be proved by what they did. This opinion is to be understood as going no further than to advise that in the judgment of this department, a court would probably not feel justified in finding the requisite "contemplation" from the facts given; but if other facts were adduced, it is conceivable that the result might be reversed by a very slight change in the evidence.

SECRETARY OF STATE

NEW CORPORATIONS

The Trojan Coal Co., Cincinnati, \$10,000. Everett C. Kline, Robert D. Conway, George W. Hollis, J. F. Roberts, Chester H. Clark.

The Peerless Motor Co., Cleveland, \$100,000. D. A. Burke, W. H. Collins, J. F. Porter, F. A. Trester, E. R. Cameron.

The Cookston Motor Car Co., Dayton, \$25,000. C. R. Cookston, R. H. Brundrett, Roland G. Landis, A. F. Hullinger, Ralph P. Dixon.

The Hochstetter Research Laboratories Co., Dayton, \$100,000. F. W. Hochstetter, Hubert A. Estabrook, Samuel L. Finn, R. H. McKee, G. E. Miller.

The Town Club Co., Cleveland, \$2,500. Max Myers, Maurice Rohrheimer, Chas. Eisenman, Emil Joseph, Samuel Weil, Julius Feiss, Albert A. Cohn.

The Master Tire and Rubber Co., Dayton, \$200,000. Carl L. Cappel, Charles H. Stults, R. S. Shuey, F. Coate, Hubert A. Estabrook.

The Industrial Exposition Co., Columbus, \$2500. B. H. Nye, S. D. Erdlen, W. M. Gear, W. H. Wilkin, son, C. T. Kuhlwein.

The Beach Oil Co., Cleveland, \$10,000. H. R. Crow, A. Weber, Z. S. Hammond, E. Howell, E. Anderson.

The Lexington-East Fifty-Fifth Co., Cleveland, \$30,000. J. J. Harwood, W. D. Dobson, Ralph R. Snow, C. L. Gierson, H. N. McLaughlin.

The Stark Livestock Co., Canton, \$3,000. W. S. Taylor, G. G. Laiblin, A. G. Smith, Geo. T. Warstler, Grant Shrop.

The Walter and Rowe Contracting Co., Cleveland, \$100,000. W. George Whitehouse, Anthony M. Golubich, Wm. C. Yahraus, L. G. Haywood, Jos. J. Rowe.

The Dayton Red Star Transportation Co., Dayton, \$25,000. E. D. Young, E. Ivan Watson, E. F. Norris, Robert C. Graham, Floyd L. Turner.

The Lexington Drug Co., Cleveland, \$5,000. Henry Weinstein, Hyman Schreiber, Max Wallach, Louis Apfel, H. L. Griffin.

The Walter B. Zimmerman Co., Columbus, \$100,000. Walter B. Zimmerman, H. L. Kime, J. M. Schooler, Benj. F. Levinson, A. H. Johnson.

The Sharp Sales and Service Co., Springfield, \$25,000. Charles F. Sharp, Geo. T. Sharp, William R. Sharp, F. A. Sharp, Stewart L. Tatum.

The Five Points Department Store Co., Cleveland, \$20,000. G. Davis, D. J. Krohn, C. C. Morgan, R. Davis, H. Sperber.

The B. F. Kider & Son Co., Beachwood Village, \$100,000. B. F. Rider, G. Murray Rider, W. E. Allyn, M. R. Parsk, L. E. Collier.

The Fremont Metal Body Co., Fremont, \$50,000. Frank Nagel, Lawrence C. Frech, Carl D. Perkins, Marshall H. Bixler, Elizabeth Bixler.

The Terpene Chemical Co., Sandusky, \$100,000. P. O. Collins, Robt. M. Cole, C. H. Richardson, C. N. Ransome, J. C. Holmes.

The Lee Brass Mfg. Co., Cleveland, \$35,000. N. Friedman, M. J. Singer, H. N. Schaefer, L. J. Kohn, A. G. Levine.

The Made Rite Rubber Products Co., Cleveland, \$300,000. R. W. John, W. V. Sleek, Wayne Eberly, F. H. Kelsey, James J. Sloan.

The Akron Signal Co., Akron, \$2,500. A. C. Littell, S. D. Stanson, W. J. Miles, Ben W. Holub, E. K. Sutton.

The Outlook Automatic Co., Cleveland, \$500. Carl F. Lezius, F. V. Hesse, M. V. Altschul, Arnold L. Stein, John R. Skelly.

PUBLIC UTILITIES COMMISSION

No. 2601—In the Matter of Supplement No. 11 to Ohio (Tariff) No. 40, Issued by F. V. Davis, as Agent, Filed June 27, 1922, Effective July 1, 1922.—Rates Fixed.

(Dated August 22, 1922.)

The Commission having heretofore, upon the protest and complaint of The Southern Ohio Coal Exchange, et al, and after due notice to all parties in interest, entered upon an investigation with respect to the rates, charges and joint rates for the transportation of bituminous coal in intrastate traffic within the state of Ohio set forth in the schedule, designated Supplement No. 11 to Ohio No. 40, filed June 27, 1922, to become effective July 1, 1922, by F. V. Davis, as agent for the several railway and railroad companies, or duly appointed, qualified and acting officers of courts in charge thereof engaged in such transportation service, under Special Permission No. 2480 of this Commission, purporting to provide the reductions in such rates, charges and joint rates for said service, prescribed by the order of the Interstate Commerce Commission, made and entered as of date May 16, 1922, in its proceeding No. 13293, upon the questions:

As to whether or not said reductions do conform to the reductions made on interstate traffic and on intrastate traffic in the eastern group;

As to whether or not the rates carried in said schedule are unjust, unreasonable or unlawful discriminatory;

As to whether or not said filing is in conformity with said Special Permission No. 2480 of this Commission, and

As to whether or not, during the pendency of the pending proceedings inquiring into the justness and reasonableness of Ohio intrastate rates on bituminous coal, and the question of proper differentials in said rates and related rates, an order of this Commission should issue directing the carriers engaged in such transportation service to forthwith file schedules carrying intrastate rates on bituminous coal in the state of Ohio in conformity with the reductions made in interstate rates and intrastate rates in other states of the eastern group,

this day, after full hearing and argument by counsel, the Commission, being fully advised in the premises, finds:

That the Interstate Commerce Commission, on May 16,

1922, in "Reduced Rates, 1922," 68 I. C. C., 734, 735, (No. 13293), made the finding:

"that the existing freight rates and charges, including charges for switching and other accessorial services, and all other charges applicable to freight service, which were increased by authority of Increased Rates, 1920, Supra, will be, on and after July 1, 1922, unjust and unreasonable to the extent that they may respectively include more than the following percentages of increases over the rates in effect immediately prior to August 26, 1920, in and between various rate groups as defined in Increased rates, 1920, 58 I. C. C., 220, 489, and Authority to Increase Rates *ibid* 302. * * In the eastern group * * * 26 per cent, instead of 40 per cent. authorized in the decisions last cited."

That, with a few exceptions, the rates, charges and joint rates for the transportation of bituminous coal in intrastate traffic within the state of Ohio by the several railway and railroad companies, or the duly appointed, qualified and acting officers of courts in charge thereof, in effect immediately prior to July 1, 1922, were in excess of the rates, charges and joint rates for such service in effect immediately prior to August 26, 1920, increased 26 per cent., found to be just, reasonable and lawful by the Interstate Commerce Commission;

That this Commission, by Special Permission No. 2480, dated June 7, 1922, authorized the carriers engaged in intrastate traffic within the state of Ohio to file schedules to become effective July 1, 1922, upon less than statutory notice, anticipating that the schedules to be filed by the carriers would be in accordance with the aforesaid finding of the Interstate Commerce Commission;

That the said schedule, Supplement No. 11 to Ohio No. 40, published and filed by F. V. Davis, as agent for the said carriers, under said Special Permission No. 2480 aforesaid, did not in many instances carry rates, charges and joint rates for the transportation of bituminous coal in intrastate traffic within the state of Ohio in conformity to the said finding of the Interstate Commerce Commission, but did not carry rates, charges and joint rates for the transportation of bituminous coal in intrastate traffic within the state of Ohio in excess of the rates, charges and joint rates for such service in effect immediately prior to August 26, 1920, increased 26 per cent., as provided by said finding of the Interstate Commerce Commission;

That the rates, charges and joint rates for the transportation of bituminous coal in intrastate traffic within the state of Ohio, as set forth and published in said schedule, Supplement No. 11 to Ohio No. 40, published and filed by F. V. Davis, as agent for the carriers engaged in such transportation service, and maintained, imposed, charged and collected by said carriers, in so far as the same exceed the rates, charges and

joint rates for the furnishing of such service which were in effect immediately prior to August 26, 1920, increased 26 per cent., are unjust, unreasonable, excessive, and unjustly and unlawfully discriminatory, and

That just and reasonable rates, charges and joint rates for the transportation of bituminous coal in intrastate traffic between points of origin and points of destination, within the state of Ohio, upon and after said first day of July, 1922, are and will be the rates, charges and joint rates for the same transportation service which were in effect immediately prior to the twenty-sixth day of August, 1920, increased twenty-six (26) percentum.

It is, therefore,

Ordered, That the railroad and railway companies, or the duly appointed, qualified and acting officers of courts in charge of the operation thereof, be, and each of them hereby is notified, directed and required to cease and desist from maintaining, imposing, charging and collecting, or attempting to maintain, impose, charge and collect, for the transportation of bituminous coal in intrastate commerce between points of origin and points of destination within the state of Ohio, rates, charges and joint rates in excess of the rates, charges and joint rates for such service, hereinbefore found and determined to be just and reasonable. It is further

Ordered, That where rates are now published and in effect applying on bituminous coal via lines of respondent carriers, either on local or joint traffic, which are lower than the rates herein found and determined to be just and reasonable, such rates will not be cancelled or affected by this order. It is further

Ordered, That respondents' schedules be corrected accordingly.

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No. 2568—In the Matter of the Application of The South Covington and Cincinnati Street Railway Company for Consent and Authority to Issue and Dispose of \$4,000,000.00 Six Per Cent. First and Refunding Mortgage Bonds.—Prayer Granted.

(Dated June 9, 1922.)

This day, after due notice to all parties in interest, this matter came on to be heard, and was heard, upon the application, as amended, of The South Covington and Cincinnati Street Railway Company, (a corporation duly organized and existing under and by virtue of the laws of the state of Kentucky, now engaged in the operation of a certain street railway property in the state of Ohio,

and purposing, upon the acquisition of certain public utility properties—which it may so acquire without the consent of this Commission—among other things, to change its name to The Cincinnati, Newport and Covington Railway Company), asking the consent and authority of this Commission to issue its Series A, First and Refunding Mortgage Bonds, bearing interest at the rate of six percentum per annum, to be dated July first, 1922, and to mature in twenty-five years, of the principal sum of \$4,000,000.00, said bonds to be exchanged at par for, or sold at par at not less than par and the proceeds used to pay and discharge the outstanding bonds (\$3,709,000.00, principal sum) heretofore issued by The Cincinnati, Newport and Covington Railway Company, (a corporation duly organized and existing under and by virtue of the laws of the state of Ohio, and whose property, among others, is to be acquired by the applicant, as aforesaid, which mature and become due and payable upon the first day of July, 1922, and to provide, in part, for the payment of the cost of the budget of additions, extensions and improvements to applicant's property and facilities, proposed to be provided during the calendar year 1922, the cost of which has been estimated at the sum of \$315,787.06.

The Commission, being fully advised in the premises, finds:

That there is now outstanding and constituting a lien upon the property to be acquired by the applicant, mortgage bonds, issued by The Cincinnati, Newport and Covington Railway Co., an Ohio corporation) of the principal sum of \$3,709,000.00, which mature upon the first day of July, 1922 and must, on or before said day, be paid and discharged or lawfully refunded;

That the applicant now has under contract or in contemplation, certain additions, extensions and improvements to its property and facilities, the cost of which has been conservatively estimated at the sum of \$315,787.06;

That the issue of applicant's said Series A, First and Refunding Mortgage Bonds of the principal sum of \$4,000,000.00 is reasonably required and the money to be procured thereby is necessary for the payment and discharge or lawful refunding of applicant's indebtedness aforesaid, and for the construction, completion, extension and improvement of its facilities as aforesaid, and

That the applicant now having capital stock issued and outstanding of the par value of \$500,000.00, and its own or other bonds constituting a lien upon its property of the principal sum of \$335,000.00 in addition to the said bonds issued by said The Cincinnati, Newport and Covington Railway Company (of Ohio) herein to be discharged, the issue of applicant's said First and Refunding Mortgage Bonds of the princi-

pal sum of \$3,835,000.00 in excess of applicant's issued and outstanding capital stock and the expenditure of the proceeds thereof, as such excess, should be specifically consented to, authorized and approved,

and is satisfied that consent and authority for the issue and disposition of said bonds should be granted. It is, therefore,

Ordered, That said The South Covington and Cincinnati Street Railway Company be, and hereby it is authorized, under its present or proposed name of The Cincinnati, Newport and Covington Railway Company to issue its Series A, First and Refunding Mortgage Bonds, bearing interest at the rate of six (6) percentum per annum, dated July first, 1922, and maturing in twenty-five (25) years from date, of the principal sum of four million dollars (\$4,000,000.00), and that any of said bonds sold shall be sold for the highest price obtainable but not less than the par value thereof, It is further

Ordered, That the issue of three million, eight hundred and thirty-five thousand dollars (\$3,835,000.00) principal sum, of said bonds, in excess of applicant's issued and outstanding capital stock, and the expenditure of the proceeds thereof, as hereinafter provided, as such excess be, and hereby they are specifically consented to, authorized and approved. It is further

Ordred, That said bonds, or the proceeds arising from the sale thereof, be issued and delivered paid for the following purposes, and no others, to-wit:

(1) The exchange or payment and discharge of the \$3,709,000.00, principal sum, of bonds, heretofore issued by The Cincinnati Newport and Covington Railway Company (of Ohio), constituting a lien against the property to be acquired by the applicant, which mature and becomes due and payable July first, 1922, and

(2) The payment, in part and to the extent of the balance of the proceeds arising from the sale of said bonds, of the cost of the additions, extensions and improvements to applicant's facilities, set forth and enumerated in the statement, marked Budget for 1922, offered and introduced in evidence as "Exhibit B," upon the hearing of this matter, the total cost of which is estimated at the sum of \$315,787.06, which budget hereby is made a part of this order by reference.

It is further

Ordered, That, forthwith upon the acquisition of any of said bonds, herein directed to be paid and discharged, the applicant render the same non-negotiable and, upon the acquisition of all of said bonds, cancel and destroy the same. It is further

Ordered, That the applicant make verified report to this Commission semi-annually, within fifteen days after the close of each calendar, semi-annual period, of the issue and disposition of said First and Refunding Mortgage Bonds, the expenditure of the proceeds, disposition thereof, and the disposition of said paid and discharged bonds pursuant to the terms and conditions of this order.



No. 2582—In the Matter of the Application of The Western Power Company, a Corporation, for Authority to Issue \$50,000.00 Capital Stock.—Prayer Granted.

(Dated August 28, 1922.)

This day, it appearing to the Commission from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, this matter came on for consideration upon the application of The Western Power Company, a corporation duly organized and existing under and by virtue of the laws of the state of Ohio, asking the consent and authority of this Commission to issue and dispose of common capital stock of the par value of \$17,000.00 and four per cent. cumulative preferred capital stock of the par value of \$33,000.00, the proceeds arising from the sale thereof to be used to construct and equip thirty-three miles of three-phase pole and wire transmission line extending from Bucyrus to Nevada and Edison, Ohio, at an estimated cost of \$49,710.00 and to provide itself with a working capital of \$290.00.

The Commission, being fully advised in the premises, finds from the pleadings and exhibits filed herein and its independent inquiry and investigation thereupon:

That the applicant has in contemplation the construction and equipment of a three-phase pole and electric transmission line, some thirty-three miles from Bucyrus to Edison to Nevada, Ohio, the cost of which has been estimated at the sum of \$49,710.00;

That for the carrying on of its public utility business the applicant will require a working capital of \$290.00, and that

The issue of applicant's common capital stock of the par value of \$17,000.00 and its preferred capital stock of the par value of \$33,000.00 is reasonably required, and the money to be procured thereby, necessary for the construction, comple-

tion, extension and improvement of its facilities and the maintenance and improvement of its service, as aforesaid,

and is satisfied that consent and authority for the issue and disposition of said capital stock should be granted. It is, therefore,

Ordered, That said The Western Power Company be, and hereby it is authorized to issue its common capital stock of the par value of seventeen thousand dollars (\$17,000.00) and its four per cent. cumulative preferred capital stock of the par value of thirty-three thousand dollars (\$33,000.00), and that said capital stock be sold for the highest price obtainable but not less than the par value thereof. It is further

Ordered, That the proceeds arising from the sale of said capital stock be, by the applicant, devoted to and used for the following purposes, and no others, to-wit:

The construction and equipment of a pole and three-phase transmission line, thirty-three miles, from Bucyrus to Edison and Nevada, Ohio, as more particularly described in the detailed estimate, marked "Exhibit A," appended to the application herein (which exhibit is made a part of this order by reference), the cost of which is estimated at the sum of \$49,710.00 and

The provision of a working capital of the sum of \$290.00

It is further

Ordered, That the applicant make verified report to this Commission, semi-annually within fifteen days after the close of each calendar, semi-annual period of the issue and disposition of said capital stock and, in full detail, the expenditure of the proceeds thereof pursuant to the terms and conditions of this order.

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No. 2142—In the Matter of the Application of The Central Ohio Gas Company for Permission to Acquire Certain Properties and for Authority to Issue and Increase its Capital Stock and to Issue Its Bonds Therefor.—Prayer Granted.

(Dated August 21, 1922.)

This day, after full hearing, due notice of the time and place of which was given to all parties in interest, this matter came on for consideration upon the application, as amended, of The Central Ohio Gas Company, (a corporation duly organized and existing under and by virtue of the laws of the state of Ohio), asking the

consent and authority of this Commission to issue its common capital stock of the par value of \$7,000,000.00 and its first mortgage, twenty year, seven per cent. Gold Bonds of the principal sum of \$3,000,000.00, said capital stock to be delivered, and the proceeds arising from the sale of said bonds to be paid as the full and final consideration for all the property, rights and other assets, subject to book account liabilities except liabilities to parent company and the surplus of said companies, of The Columbus Natural Gas Company, The Medina Gas and Fuel Company, The Buckeye State Gas and Fuel Company, The Coshocton Gas Company and The Berea Pipe line Company, the purchase and acquisition of which, by the applicant, was duly consented to and authorized by the order this day made and entered in proceeding No. 2141.

The Commission, being fully advised in the premises, finds from the pleadings and exhibits filed herein, the evidence offered at the hearing thereupon, and its independent investigation of the books and property of the companies, the capitalization of the consideration for which herein is asked to be authorized:

That, for purchase and sale purposes, the value of the property of said The Columbus Natural Gas Company, The Medina Gas and Fuel Company, The Buckeye State Gas and Fuel Company, The Coshocton Gas Company and The Berea Pipe Line Company is not less than the sum of \$9,550,000.00.
and

That the issue of applicant's common capital stock of the par value of \$7,000,000.00 and its First Mortgage, twenty-year, seven per cent gold bonds of the principal sum of \$3,000,000.00 is reasonably required, and the money to be procured thereby, necessary for the acquisition of said property,

and is satisfied that consent and authority for the issue and disposition of said common capital stock and bonds should be granted. It is, therefore,

Ordered, That said The Central Ohio Gas Company be, and hereby it is authorized to issue its common capital stock of the par value of seven million dollars (\$7,000,000.00), and its First Mortgage, twenty year, seven per cent. Gold Bonds of the principal sum of three million dollars (\$3,000,000.00), and that said bonds be sold for the highest price obtainable but not less than eighty-five (85) percentum of the principal amount thereof. It is further

Ordered, That any discount arising from the sale of said bonds for less than the principal sum thereof be amortized pursuant to

the rules and regulations heretofore prescribed by this Commission. It is further

Ordered, That said capital stock be delivered at par, and the proceeds arising from the sale of said bonds, paid as the full and final payments of the consideration for all the property, rights and other assets of The Columbus Natural Gas Company, The Medina Gas and Fuel Company, The Buckeye State Gas and Fuel Company, The Coshocton Gas Company and The Berea Pipe Line Company, subject to book account liabilities except liabilities to parent company and the surplus of the said companies the purchase and acquisition of which, by the applacant, was this day consented to and authorized by the order made and entered in proceeding No. 2141, which order hereby is made a part of this order by reference; nor shall said capital stock be issued or said proceeds of said bonds paid for any other purpose whatsoever. It is further

Ordered, That the applicant make verified report to this Commission of the issue and disposition of said capital stock and bonds and the expenditure of the proceeds of said bonds pursuant to the terms and conditions of this order. It is further

Ordered, That the findings hereinbefore set forth as to the value of said property, rates and service and the within acquiescence in the capitalization of the agreed consideration for said property, shall not be binding upon this Commission in any future proceeding involving rates and/or service.

ATTORNEY GENERAL

Section 7730-1, G. C., Applies Where There Has Been a Suspension of Schools Because of an Insufficient Number of Pupils Attending, or Where the Schools Have Been Suspended Because of Consolidation, or Where Upon the Erection of a New District in Section 4736, G. C., Some of the Schools in the New District Have Been Suspended by Virtue of Section 7730, G. C.—Where a School Has Been Suspended Under the Provisions of Section 7730, G. C., the Board of Education Cannot Move a Schoolhouse in Which the Suspended School was Conducted Until After a Period of Four Years From the Date of Such Suspension Because of the Rights of the Petitioners Mentioned in Section 7730, G. C., the Sole Exception Being Where Such Building Has Been Condemned for School Use by Proper State Authorities.

No. 3424—(Opinion Dated July 29, 1922.)

Hon. Clinton W. Fawcett, Prosecuting Attorney, Ottawa, Ohio.

Dear Sir: Acknowledgment is made of the receipt of your request for an opinion on the following statement of facts:

“In 1921, the Board of Education of Putnam County, Ohio, acting under Section 4736 of the General Code, created the Cloverdale Consolidated Village School District from the Cloverdale Village School District and certain other districts lying contiguous thereto. The schools in the contiguous districts were suspended and there are three schoolhouses that the Board of Education is not now using. One of these schoolhouses is situated in a district that was divided by the Board of Education, however, the schoolhouse is located in that part of the district which was made a part of the new or consolidated district.

Section 7730 and 7730-1, G. C., among other things, provide for the suspension of a rural or village school, the transfer of pupils, the re-establishment of the same, and when and how school property where the school is suspended may be sold. Section 7730-1 further provides that where a school has been suspended through either or any of the processes mentioned in 7730, the school building and real estate located in the territory of such suspended school shall not be sold by the Board of Education of the district until after four years from such date of suspension.

I desire your opinion as to whether the Board of Education of Cloverdale Consolidated Village School District can

move the schoolhouse which is located in the district that was divided and may be used for school purposes in the Village of Cloverdale? It now appears that since the Cloverdale Consolidated Village School District has been created, the buildings are inadequate.

I also desire to know whether Section 7730-1, G. C., which limits the time that the buildings can be sold to four years after the suspension of the school applies to all cases in which the school has been suspended, either from an insufficient number of pupils attending or from the consolidation or creation of a new district."

Section 7730, G. C., provides that the board of education of any rural or village school district may suspend by resolution temporarily or permanently any school in such district because of disadvantageous location or any other cause, and the section then proceeds in detail to show the necessary steps to be taken in order to carry out such suspension. The portion of Section 7730, G. C., which relates to your question is the third paragraph of Section 7730, G. C., which reads as follows:

"Upon petition filed with a local board of education between May 1 and August 1 of any year signed by the parents or guardians of twelve children between seven and fifteen years of age, living in the district and enrolled in school, whose residences are nearer to a certain school which has been suspended than to any other school of the district, asking that such suspended school be reopened, the local board of education shall reopen such school for the ensuing school year provided there is a suitable school building in the territory of such suspended school as it existed prior to suspension."

Here it is provided that the parents or guardians of twelve children may petition that the suspended school be reopened, and upon the presentation of such petition carrying the required number "the local board of education shall reopen such school for the ensuing school year provided there is a suitable school building in the territory of such suspended school as it existed prior to suspension." (H. B. 216—109 O. L.) The closing language of Section 7730 G. C., indicating that there should be a suitable school building in the territory of such suspended school is significant, rather indicating that the school building should be retained in the territory of the suspended school until it has been legally abandoned or legally disposed of as provided for in the following section (7730-1, G. C.):

"In order to protect the rights of the petitioners mentioned in Section 7730, where a school has been suspended

through either or any of the processes mentioned in such section, the school building and real estate located in the territory of such suspended school and in which property the board of education has legal title, shall not be sold by the board of education of the district until after four years from such date of suspension of said school unless the said school building has been condemned for school use by the chief deputy of the division of workshops, factories and public buildings. Failure to use the school building for school purposes within the four years following the resolution of suspension of such school shall be considered a legal abandonment of such school and the school building and real estate in which the board of education has legal title may be disposed of such board of education according to law."

The closing language of 7730, G. C., in a clear attempt on the part of the General Assembly to protect the rights of the petitioners residing in the local territory and yet if the school building in the territory of such suspended school is not in existence in the territory then the petition of the parents or guardians comes to naught and can accomplish nothing.

The rights of the petitioners mentioned in 7730, G. C., have heretofore been passed upon by the Supreme Court of this state, in the case of *The State, ex rel. Myers, v. The Board of Education of Rural School District of Spencer Township, Lucas County, Ohio*, 95 O. S., page 367, and the syllabus in that case passing upon 7730 reads as follows:

"1. The literal meaning of the words 'may' and 'shall' is not always conclusive in the construction of statutes in which they are employed; and one should be regarded as having the meaning of the other when that is required to give effect to other language found in the statute, or to carry out the purpose of the legislature as it may appear from a general view of the statute under consideration.

2. Where power is granted by statute to public officers by permissive language, coupled with a provision for invoking the exercise of such power by a petition of voters, or of any part of the public, such language will be regarded as peremptory unless a contrary construction is manifestly required.

3. Under the proviso contained in Section 7730, General Code, as amended May 27, 1915 (106 O. L., 398), the board of education of any rural or village school district, which has theretofore suspended any or all schools in such village or school district, is required to re-establish such suspended school on a petition therefor, signed by a majority of the voters of the suspended district, at any time the school enrollment of the said suspended district shows twelve or more pupils of lawful school age."

Section 7730-1 is a supplementary section to 7730, G. C., and should be read in conjunction with the latter because 7730 closes with the language relative to the "suitable school building in the territory of such suspended school" and then 7730-1, G. C., sets forth how such building may be disposed of in order to protect the rights of the petitioners named in 7730, G. C. It may be said that prior to the enactment of 7730-1, G. C., (H. B. 616-108 O. L., part 2), there was nothing in the statutes of the state which established just when or after how long a lapse of time a school building could be considered to be abandoned. In order to clear up this feature, as to what would constitute legal abandonment of a school building Section 7730-1, G. C., was enacted, providing that four years should elapse following the resolution of suspension of such school before the building could be disposed of by the board of education. It is noted that the language in 7730-1, G. C., is, that the building "shall not be sold" by the board of education until after four years have elapsed, and further that failure to use the school building for school purposes within the four years gives the board of education owning the building the right to "dispose of" the same according to law. When 7730 and 7730-1, G. C., are read together, there seems to be clear intent on the part of the law-making body that the building existing in the local school territory prior to suspension should remain intact, or in its present location in the local school territory for a period of at least four years. It is clear from the language of 7730-1, G. C., that the building "shall not be sold" until after four years unless condemned for school use by state authorities. If the building was sold, it might be removed and its use by the board of education for local school purposes would cease in any event, the title having passed to private ownership. Thus, as indicated heretofore, the rights of the petitioners mentioned in 7730, G. C., would not obtain at all. The question which you submit is not upon the selling of the building, as you concede that that cannot be done prior to four years, but upon the actual "removal of the building" from the local school territory to another point in the district and within the village of Cloverdale, where buildings are at present inadequate for school purposes. It would appear that if the General Assembly desired that a school building located in a territory where a school had been suspended under 7730, G. C., desired to say that the building could be removed from its location within the local school territory, even though not sold, the law-making body would likely have said so. On the contrary, there seems to be within both Sections 7730 and 7730-1, G. C., the view

that the building should remain in the local school territory for a period of at least four years following the resolution of suspension of such school.

In your closing paragraph you desire to know "whether Section 7730-1, G. C., which limits the time before the buildings can be sold to four years after the suspension of the school, applies to all cases in which the school has been suspended, either from: (1) An insufficient number of pupils attending, or (2) from the consolidation, or (3) the creation of a new district." The answer to this is, that Section 7730, G. C., applies in either case, because schools cannot be suspended under the law unless by virtue of 7730, G. C. An exception to this might be under old 7784, G. C., where a board of education under its authority of assigning pupils where it sees fit in its own district might deplete the enrollment in a local school to such an extent that the school would be virtually abandoned, and even in this event the board of education desiring to suspend a school so depleted should spread upon its minutes the resolution of suspension mentioned in 7730 G. C., so that the period of four years would have a definite date from which to run. The consolidation of school is also accomplished under 7730, G. C., while new districts are created under 4736, G. C., but the creating of a new district in itself does not abandon any schools. It merely changes school district lines and has no reference to the points in such new district where the schools are to be conducted. Thus a new school district is created by the county board of education, but the county board of education cannot say what schoolhouses shall be operated, that being left to the local board of education in the new school district. If a new school district is created, the operation of the schools in the old schoolhouses formerly in use still obtains until the board of education in the new district by virtue of 7730, G. C., suspends such schools as it may see fit. Thus 7730, G. C., becomes involved in either one of the three cases mentioned by you, and then 7730-1 says that it shall apply "where a school has been suspended from either or any of the processes mentioned in such section (1130)." The result is, that 7730-1, G. C., applies where there has been a suspension of schools because of an insufficient number of pupils attending, or, where the schools have been suspended because of consolidation, or where upon the creation of a new district in 4736, G. C., some of the schools in the new district have been suspended by virtue of 7730, G. C.

In reply to your inquiry, you are advised that it is the opinion

of this department that "where a school has been suspended under the provision of 7730, G. C., the board of education cannot move a schoolhouse in which the suspended school was conducted until after a period of four years from the date of such suspension because of the rights of the petitioners mentioned in 7730, G. C., the sole exception being where such building has been condemned for school use by proper state authorities."



Under the Provisions of Section 4526, General Code, Setting Forth the Powers and Duties of the Board of Tax Commissioners of a City, the Position of Superintendent of City Schools is Incompatible with the Office of Member of the Board of Tax Commissioners (4523) in Such City, and the Two Positions May Not Be Held by One and the Same Person at the Same Time.

No. 3291—(Opinion Dated July 3, 1922.)

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio:

Gentlemen—Acknowledgment is made of the receipt of your request for the opinion of this department reading as follows:

"We are enclosing herewith communication received from the mayor of the city of P., Ohio, relative to the superintendent of school of the city school district of P., acting as trustee of the sinking fund of said city, and are respectfully requesting your opinion on same."

The statement of the mayor enclosed by you reads as follows:

"The superintendent of the city school district several years ago was appointed one of the trustees of the sinking fund for the city proper, and under Section 4523 et seq. of our code he thereby became a member of the board of tax commissioners for the city proper, and by virtue of Section 7614 of our code he was made a member of the board of commissioners of the sinking fund for his own school district.

"Quaere? Are not these four positions, to wit, (a) Superintendent of the schools (thereby agent of the board of education), (b) trustees of the sinking fund of the city proper, (c) a member of the board of tax commissioners for the city proper, (d) a member of the board of commissioners of the sinking fund for his own school district, incompatible and renders his prior appointment illegal?

"By virtue of Section 7614 the superintendent passes upon the amount of his own school budget, and the amount of the

sinking fund thereof to the detriment of the sinking fund necessary for the absolute needs of the city proper and the tax for general purposes and thereby creates a situation which may rob the city of the necessary levy for general purposes within either the five, ten or fifteen mill limitation, for the levy fixed by said trustees, both for the school district and city, are to be fixed before any other levy is made.

"I think that the former opinion of the Attorney General holding that a member of a board of education cannot be a member of the sinking fund is analogous to this quære herewith presented and places the superintendent of the schools in the same category of cases."

Pertinent sections of the law are as follows:

Section 7614:

"The board of education of every district shall provide by a tax levy for the payment of the annual interest on its bonded indebtedness, for the payment of its serial bonds as they mature, and for a sinking fund for the extinguishment of its other bonded indebtedness, which funds shall be managed and controlled by a board of commissioners designated as the 'board of commissioners of the sinking fund of', (inserting the name of the district), which shall be composed of five electors thereof, and be appointed by the common pleas court of the county in which such district is chiefly located, except that, in city or village districts the board of commissioners of the sinking fund of the city or village may be the board of the school district. Such commissioners shall serve without compensation and give such bond as the board of education requires and approves. Any surety company authorized to sign such bonds may be accepted by such board of education as surety. The cost thereof, together with all necessary expenses of such commissioners, shall be paid by them out of the funds under their control." (H. B. 33, 109 O. L., 345.)

Section 4523:

"In each city, the trustees of the sinking fund shall be a board of tax commissioners, but as members of such board they shall receive no compensation for their services." (96 v. 38.)

Section 4526:

"Upon receipt of the levies made by the council, as provided by law, the board of tax commissioners shall consider them and within ten days after such receipt shall return them to the council with its approval or rejection and, in case of rejection, giving its reasons therefor. It may approve or reject any part or parts thereof, and the parts rejected by

such board shall not become valid levies unless the council of such municipality shall thereafter, by three-fourths vote of all members elected thereto, adopt such levy or part thereof. If the board of tax commissioners approve such levies, or if it neglects to return them with its approval or rejection within such ten days, they shall be valid and legal. In no case shall the board of tax commissioners have authority to increase such levy." (96 v. 38.)

While Section 7614 was amended in 109 O. L., p. 345, investigation will show that the provision that the board of commissioners of the sinking fund of the school district shall be composed of five electors and that in a city or village school district the board of commissioners of the sinking fund of the city or village "may be the board of the school district," was unchanged. Thus prior to its amendment in 109 O. L., p. 345, Section 7614, G. C., as amended in 97 O. L., 352, read as follows in its first sentence:

"The board of education of every district shall provide a sinking fund for the extinguishment of all his bonded indebtedness, which fund shall be managed and controlled by a board of commissioners designated as the 'board of commissioners of the sinking fund of.....' (inserting the name of the district), which shall be composed of five electors thereof, and be appointed by the common pleas court of the county in which such district is chiefly located, except that, in city or village districts the board of commissioners of the sinking fund of the city or village may be the board of the school district."

The former opinion of this department, holding that a member of a board of education cannot be a member of the sinking fund trustees of a city, was issued on February 15, 1910, and appears at page 1041, Opinions of the Attorney General for 1910-1911. The following excerpt is taken from that opinion as appearing on page 1043, to wit:

"The acceptance by the person in question of his office as member of the board of education of the city school district would ipso facto his membership on the municipal board of sinking fund trustees, if the two positions are incompatible. While the authorities have failed clearly to define the tests of common law incompatibility, it seems to me that it may safely be said that, when a sound public policy as evinced by the statutes defining the duties of two offices would seem to prohibit one person from discharging both sets of duties, the offices should be regarded as incompatible; and although the contingency which would give rise to the incompatibility would, in the nature of things, seldom arise, and might be

very remote in point of fact, nevertheless the incompatibility exists."

The opinion of the Attorney General in 1910 on this question was based very largely upon the provisions appearing in the Paine law, 99 O. L., 562, 565, an act providing for classified civil service employes in municipalities of the state. The Paine law provided that the president of the board of education of the city school district, and the president of the board of sinking fund commissioners (evidently alluding to the sinking fund trustees) should be two of three members of an ex-officio board, whose power and duty it was to appoint the civil service commissioners of the city. This appointing board, under the Paine law, did not discharge all of its duties at once, but was rather a continuing body, because the same section provided that the civil service commissioners "may be removed by the appointing commission." The question was raised in 1910 as to whether a member of the board of education, who was also a member of the sinking fund trustees of the city, might not have two votes out of the three, whose duty it was to appoint the civil service commission under the Paine act, for the member of the board of education might be elected president of the board of education and he might be elected president of the board of sinking fund trustees, in which event the very condition discussed would clearly obtain. Since the Paine law is no longer in existence in the state, having been succeeded by the provisions of the state civil service act (486 et seq.), the reasoning appearing in the opinion of 1910 does not lie at the present time. However, other things do obtain which should be considered after a careful reading of Section 4526, *supra*, wherein the incompatibility, if any, must be found.

As indicated heretofore, under the provisions of Section 7614, G. C., in a city or village school district the board of commissioners of the sinking fund of the city "may be the board of the school district" and in the statement of facts furnished by the mayor it appears that under Section 7614 "he (the superintendent of city schools) was made a member of the board of commissioners of the sinking fund for his own school district." Having been made a member of the sinking fund trustees of a city under Section 4523, G. C., the city superintendent of schools thereby became a member of the "board of tax commissioners," which is an additional office recognized by the statutes, since he must take an additional oath under Section 4524 to support the constitution of the

United States and of this state and to faithfully and honestly perform his duties as such tax commissioner. Under Section 4525, G. C., the city auditor is clerk of the board of tax commissioners and shall keep a full record of all proceedings of the board.

In analyzing Section 4526, G. C., as to the powers and duties of the board of tax commissioners, it is found that upon receipt of the levies made by the council of the city the board of tax commissioners

“shall consider them and within ten days after such receipt shall return them to the council with its approval or rejection, and, in case of rejection, giving its reasons therefor. It may approve or reject any part or parts thereof and the parts rejected by such board shall not become valid levies unless the council of such municipality shall thereafter, by three-fourths vote of all members elected thereto, adopt such levy or part thereof. If the board of tax commissioners approve such levies, or if it neglects to return them with its approval or rejection within such ten days, they shall be valid and legal.”

It thus appears that under the provisions of Section 4526, G. C., the board of tax commissioners in a city may reject all of the levies made by the city council, or a part of the levies made by the city council, and that if any of the levies made by the city council and submitted to the board of tax commissioners are rejected by the latter board, such levies shall not become valid unless three-fourths of all members elected to the council adopt such levy or part thereof. In the case at hand the superintendent of city schools, an employe of the board of education, sits as a member of this board of tax commissioners; he sits as such member in a city where the city council is composed of persons belonging to three distinct political parties, and a three-fourths majority vote is not possible on all questions of city administration. It must be remembered that in a city composing the majority part of a city school district there is an ever-present struggle between the city council and the city board of education as to whether each shall be allowed all of the levies which it asks for. Thus in practice since the levies as a whole are limited in the taxing district, if the municipal levy is allowed in full, likely the school board levy must be decreased by those whose power it is to approve. Similarly, if the board of education's levy increases, very frequently just to that extent the levy allowed to the city council must be decreased for city purposes. It would appear to be sound policy that the board of tax commissioners, or the budget commission in a county,

should not have among its members any person who has more interest on one side of the question than he would have on the other side of the question. The contemplation of the law is that this deciding body should be free and unencumbered in making its decisions and that no personal interest of any of the members of the board should exist. It is clear that if the board of education had one of its members on this board of tax commissioners and the city council did not (and it is not permitted to have), more than likely from the standpoint of law the interests of the board of education would receive prior consideration in the mind of the member of the board of tax commissioners, who is also a member of the board of education, when compared with the interests of the city proper, as submitted in the levies made by the city council.

The rule of incompatibility is that one office is incompatible with another office when it is subordinate to or a check upon the other. In the case at hand the city superintendent of schools, through a series of different sections of the law, dovetailing each into the other, occupies these four positions: (a) superintendent of city schools, (b) trustee of the sinking fund of the city proper, (c) member of the board of tax commissioners for the city proper (4523), and (d) a member of the board of commissioners of the sinking fund for the city school district (7614). To illustrate how this proposition might work out because of personal interest, the salary of the city superintendent of schools might be increased on the basis that the levy, or a portion of it made by the city council and submitted to the board of tax commissioners, would be rejected in whole or in part, thereby giving the board of education additional revenue from which the increase for the city superintendent or school administration in the city school district could be secured. Here the superintendent of city schools, an agent of the board of education, sitting upon the board of tax commissioners, could vote to reject in whole or in part the levies submitted by the city council, thereby assisting in securing to the board of education, his employer, a better chance of securing an increased levy in which he may or may not be directly concerned. It would appear that if a person occupied a position as member of the board of tax commissioners in a city, he would have a check upon the amount of money which may be received by the board of education in a city school district in having its entire budget put through without being militated against by the needs of the city proper. It cannot be conceived that it would be proper for the board of education in a city school district to have a member of the board of

tax commissioners in the city when one considers the power which is given the tax commissioners in Section 4526, G. C. This being true the same rule would likely obtain in the case of an employe of the board of education. Under the provisions of Section 7703, G. C., the superintendent shall "perform such other duties as the board determines," thus indicating clearly that the superintendent is the servant of the board of education and if he shall perform such other duty as the board determines the board of education might at some time send the superintendent, instead of one of its own members, before the county budget commission or even before the board of tax commissioners in a city school district, to make a plea for or against certain levies which would affect one way or the other the budget desired by the board of education, and those connected with school administration. Speaking upon the superintendent of schools in a city school district, Opinion 422, issued on June 23, 1919, to the superintendent of public instruction, uses the following language on page 685, Opinions of the Attorney General, Volume 1, to wit:

"The superintendent of a school district, as indicated before, has been employed primarily as the executive officer of the board of education in its dealings with teachers, parents and pupils. In a great many matters he is the agent of the board of education and it is through him that complaints are received from the public.

* * * * *

Relative to question 3, which reads: 'what is the interpretation of that portion of Section 7703, which reads "and perform such other duties as the board determines," this means that the superintendent, as an employe of the board of education, shall perform any other duties that the board placed upon him that are reasonable and within the scope of school affairs and which are not prohibited by statute.'

In reply to your inquiry you are therefore advised that it is the opinion of this department that under the provisions of Section 4526, G. C., setting forth the powers and duties of the board of tax commissioners in a city, the position of superintendent of city schools is incompatible with the office of member of the board of tax commissioners (4523) in such city, and the two positions may not be held by one and the same person at the same time.

SECRETARY OF STATE

NEW CORPORATIONS

The Star Finance Co., Cleveland, \$500. H. A. Pollack, M. A. McCormack, A. J. Roth, G. A. Hurley, P. M. Gerlach.

The Eureka Spring service Co., Cleveland, \$5,000. E. S. Black, L. B. Gordon, P. B. Beals, W. E. Livingston.

The P. O. McIntire Coal Co., Cleveland, \$500. P. O. McIntyre, A. M. Danielson, C. C. Wise, W. R. Winn, A. I. Magyar.

The MidlWest Construction Co., Columbus, \$10,000. R. H. McOuat, T. J. Sullivan, P. C. Hamilton, B. J. Blair, W. T. Redmond.

The Patterson Battery Co., Cleveland, \$15,000. S. L. Patterson, W. F. Patterson, A. L. Barber, J. E. Patterson, J. J. Henderson.

The Strauss-Weber Building Co., Cincinnati, \$10,000. Fred Weiland, H. E. Ritchie, S. B. Strauss, F. A. Weber, Louis Weiland.

The Shrier Neil Oil and Gas Co. Dover, \$5,000. J. G. Senhauser, J. Jenkins, W. J. Shriver, John Schoch, George Kreamer.

The Joseph Co., Cleveland, \$10,000. C. C. Townes, M. C. Portman, D. B. Clampitt, A. R. Graeff, A. C. Findlay.

The Canton Auto Sales Co., Canton, \$10,000. J. A. Warner, R. M. Warner, A. H. Schaub, J. M. Roose, M. I. Warner.

The First State Savings and Loan Co., Cleveland, \$5,000. P. A. Frey, C. L. Sheil, V. Glessner, L. W. Wickham, M. DeGolyer.

The Burnes-Wolaver Co., Cleveland, \$10,000. H. L. Jollay, C. L. Burns, E. D. Wolaver, Rebecca Rosenberg, Marie Sweeney.

The Chagrin Valley Building & Loan Ass'n., Chagrin Falls, \$1,000.000. Frank F. Gentsch, F. M. Pritts, F. B. Kavanagh, R. L. Kornfield, C. M. Knight.

The B. Louis Constr. Co., Cleveland, \$10,000. B. Louis Slaton, Lia Slaton, R. B. Lawrence, D. T. Lawrence, G. Kanner.

The Realty Savings & Loan Co., Cleveland, \$1,000,000. L. E. Kohls, F. C. Chabek, M. L. Leinberger, J. B. Smartwood, C. A. Hasse.

The Hoover Milling Co., Mansfield, \$30,000. S. D. Hoover, F. W. Schenk, H. H. Hoover, Daniel Richert, W. L. McCollough.

The Geneva-Madison Savings and Loan Ass'n., Geneva, \$100,000. C. E. Mahon, James V. Suhr, H. R. Hill, W. P. B. Wachtel, H. B. Mallette.

The Mid-Continent Securities Co., Willoughby Twp., \$1,000. R. S. Crawford, A. Mellick, R. K. Wilson, R. C. Hyatt, R. B. Pettit.

The Oil Glow Co., Greenville, \$8,000. T. B. Christopher, R. Burdge, R. T. Anderson, Harold Robb, Frances Odlin.

The J. C. Link & Son Co., Cincinnati, \$10,000. E. F. Peters, L. G. Denghausen, L. T. Murphy, R. L. Hinds, J. E. Moloney.

The Camele Machine Co., Salem, \$30,000. C. P. Hepler, Amos Entrick-en, Hiram S. Hendrick, Fred Kremser, John Leeson.

The Cleveland Capsule Co., Cleveland, \$20,000. Frank Richards, J. V. O'Neil, S. W. Glick, C. R. Johnston, Gertrude Kenny.

The J. M. Ranchbottom Co., Columbus, \$10,000. J. M. Ranchbottom, Millie Ranchbottom, Geo. Frankenbert, R. A. Cooke, E. J. Meyer.

The Youngstown Strand Company, Youngstown, \$10,000. G. F. Hammond, Bessie Feibus, Ruth Smedley, Anna Lavin, R. R. Stephenson.

The Bob Allen Overland Willys-Knight Sales Co., Cleveland, \$25,000. Gladys Miller, Margaret Brewer, W. H. Bates, H. W. Guitner, J. J. Chester, Jr.

The National Snow Remover Co., Cleveland, \$500. H. L. Jollay, H. L. Parmenter, E. O. Loeber, H. T. Gettins, I. M. Grolle.

The Columbian Hardware Co., Cleveland, \$500. J. P. Taggart, L. C. Spieth, O. O. Vroeman, W. L. Spring, L. A. O'Neil.

The Heimberger-Rutland Company, Cleveland, \$5,000. F. W. Heimberger, R. D. Rutland, John W. Gates, Marie Khas, K. E. Hagerty.

The Logan-Long Co., Franklin Warren Co. \$50,000. John Logan, Godfrey Long, J. W. Quigley, J. C. McKeown, O. F. Transue.

The Cutter Stock Co., Columbus, \$5,000. W. R. Cutter, W. H. Cutter, L. F. Cutter, M. C. Slattey, Q. J. Auernehy.

The Standard Automobile Supply Co., Wooster, \$10,000. A. W. Sieglaff, W. M. Cramer, H. J. Smith, F. C. Strausbaugh, G. M. Lemmon, Wm. Brown, R. Miller.

The Monarch Belting Co., Cleveland, \$500. Geo. DeFrieze, A. J. DeFrieze, H. J. Kimpel, Ruth Cliff Kimpel, M. Miller.

The White Transportation Co., Cleveland, \$500. P. A. Murphy, R. F. Roberts, G. J. Stevens, W. J. Murphy, C. E. Arthur.

The Turner Co., Cleveland, \$1,000. H. B. Turner, Louis Bloomfield, W. H. Wilson, D. K. Henderson, Morris Meyer.

The National Provision Co., Cleveland, \$500. N. M. Gottschalt, S. Graham, Rees H. Davis, F. J. Young, C. M. Vrooman.

The States Coal Co., Columbus, \$20,000. P. L. Weaver, T. H. Moore, Kerr W. Rittenhouse, Chas. F. Weaver, Bess Allen.

The Jennings Theater Co., Cleveland, \$1,000. M. C. Hanson, K. F. Laughrin, F. M. Kenney, Robert M. Morgan, C. E. Essick.

The Wm. H. Gillespie Co., Cleveland, \$5,000. M. L. Dilley, Eva Horvath, G. R. Sizer, J. A. Brune, Irma Bohn.

The Weinberger-Treadon Drug Co., Cleveland, \$100,000. Alfred Safran Joseph D'Angelo, Adolph Weinberger, W. J. Treadon.

The Reliable Realty & Construction Co., Cleveland, \$25,000. I. Shenderoff, A. A. Kalish, A. E. Kalish, Anna Miller, Mac Newberger.

The Rush Creek Lima Co., Bremen, \$10,000. E. R. Johnston, Judson McCullough, Milton Larimer, J. W. McCandlish, G. M. Biddle, C. D. Stoner.

The Toledo Oldsmobile Co., Toledo, \$50,000. O. H. Soengler, J. S. Feneley, M. Siglow, R. K. Spengler, S. M. Douglas.

The Sylvania Investment Co., Sylvania, \$10,000. T. F. Dunn, A. F. Connolly, I. J. Flory, R. Weisenberger, H. F. Trutt.

The Stanton Park Amusement Co., Steubenville, \$100,000. J. K. Kapulias, F. D. Sinclair, Alexander T. Loggie, J. Oscar Naylorm, A. G. Constant.

The Malta Building and Mercantile Co., Dinonvale, \$15,000. W. E. Powley, Geo. W. Chaney, W. G. Tweedy, H. E. Likens, G. D. McKean, R. W. Phillips.

The Charles F. Smith Restaurant Co., Cleveland, \$25,000. C. F. Smith, Carolyn Gottfried, H. S. Gottfried, J. S. Siloen, J. J. Nassy.

The Bader Oil Co., Cleveland, \$10,000. D. M. Bader, D. O. Bader, M. E. E. Davies, R. O. Davies, J. W. Bader.

The Hoover-Phillips Co., Steubenville, \$100,000. W. F. Hoover, C. A. Phillips, J. W. Roby, V. W. Kohl, H. I. Bland.

The Consumer Coal & Hay Co., Bellefontaine, \$5,000. E. M. Ritter, K. D. Ritter, Florence Ritter, A. P. Humphreys, G. S. Middleton.

The Celina Co., Toledo, \$25,000. R. W. Oliver, E. W. Bassett, C. M. Oliver, J. B. Bassett, J. C. Cochran.

The Unique Battery Service Co., Cleveland, \$5,000. C. R. Stowe, N. M. Kraus, I. C. Herbert, M. L. Deaver, G. M. Dory.

The Great Lakes and St. Lawrence River Coal Co., Cleveland, \$25,000. D. G. Jaeger, C. C. Handy, H. C. Siebold, T. A. Palmer, P. W. Kuntz.

The Kinomak Co., Cleveland, \$500. Wm. C. Keough, M. A. Loeser, Francis, H. Beam, L. S. Leppla, S. L. Waxman.

The Ashland Country Club Co., Ashland, \$1,000. J. L. Clark, P. A. Myers, T. W. Miller, F. R. Beer, J. C. Myers.

The Salem Chattel Mortgage Co., Salem, \$1,000. W. H. Kirby, W. A. Kelleher, L. G. Henault, F. E. Mulkie, Jr., H. L. McCarthy.

The Irvin H. James Lumber Co., Springfield, \$15,000. J. Warren James, J. F. Kissinger, I. H. James, W. B. Bauer, L. M. Goode.

The Homeier-Whorley Motor Co., Akron, \$25,000. A. L. Homeier, M. M. Whorley, P. A. Snyder, Z. M. Whorley, C. H. Stahl.

The Ohio Real Estate Bonding Co., Cleveland, \$50,000. C. A. Keenan, F. F. Dunn, A. G. Hardesty, H. J. Biggins, W. S. Prasser.

The Nasco Construction Co., Cleveland, \$20,000. C. A. Keenan, F. F. Dunn, A. G. Hardesty, W. S. Prasser, H. J. Biggins.

The Ep-Keehn Co., Toledo, \$25,000. H. T. Towe, V. A. DeLaney, S. J. Hiett, W. H. Brackney, A. T. Georley.

The Lyceum-Columbus Theatre Co., Cleveland, \$10,000. L. M. Rich, O. J. Zinner, D. J. Zinner, M. H. Rich, I. F. Werley.

The Ohio-Dayton Theatre Co., Cleveland, \$10,000. L. M. Rich, O. J. Zinner, D. J. Zinner, M. H. Rich, I. F. Werley.

The Duquesne-Pittsburgh Theatre Co., Cleveland, \$10,000. L. M. Rich, O. J. Zinner, D. J. Zinner, M. H. Rich, I. F. Werley.

The Manheim-Vail Productions Co., Cleveland, \$10,000. L. M. Rich, O. J. Zinner, D. J. Zinner, M. H. Rich, I. F. Werley.

The Crystal Lake Park Co., Marion, \$50,000. W. H. Holverstott, Millard Hunt, G. W. Jakeway, F. B. Scherff, F. E. Guthery.

The Hare Mfg. Co., Cleveland, \$10,000. W. A. Hare, E. E. Schwarz, J. J. White, P. Narowitz, J. H. Campbell.

The Standard Rye Bread Co., Akron, \$10,000. David Auerbach, Samuel Liberman, Joseph Weinberg, Peter Endres, Sarah Auerbach.

The Wheeling, St. Clairsville and Cambridge Transportation Co., St. Clairsville, \$100,000. E. W. Smith, R. S. Smith, H. Pasco, Allegra Gray, J. H. Christy.

The Barnesville & Woodsfield Taxi Co., Woodsfield, \$5,000. W. C. Moonney, J. D. Mooney, I. E. Wittmer, C. E. Bishop, D. O. Watson.

The Mersing Limousine Service Co., Toledo, \$10,000. Charles Mersing, L. M. Mersing, C. J. Baser, L. K. Burgan, P. F. Parrott.

The Commercial Holding and Finance Co., Cincinnati, \$500,000. K. H. Bremer, C. F. Arand, J. M. Riggle, B. E. Moore, E. T. Stevenson.

The Jefferson Bldg. and Loan Assn. Jefferson, \$1,000,000. L. Q. Rawson, B. F. Rawson, F. M. Pritts, E. S. Roberts, F. F. Gentsch.

The Webster Mortg. & Investment Co., Cleveland, \$10,000. Suggs Garber, Anna Teitel, R. A. Carmody, W. G. Bailey, Wanda Waldegar.

The Providence Milling Co., Defiance, \$5,000. F. Heising, A. B. Miller, W. P. Wallace, H. L. Crawford, E. P. Howell.

The Toledo Furniture Frame Co., Toledo, \$5,000. H. H. Notzka, T. Krause, L. B. Schoen, A. Weisenberg, Albert Lohbauer.

The Independence Savings & Loan Co., Independence, \$1,000,000. E. R. Crouter, E. W. Hayden, I. D. Allen, C. Schlenker, G. F. Lante.

The Brecksville Svgs. & Loan Co., Brecksville, \$1,000,000. E. R. Crouter, E. W. Hayden, V. D. Allen, G. Schlenker, G. F. Lante.

The Premier Heater Co., Cleveland, \$25,000. E. W. Hayden, C. Schlenker, D. F. Hayden, P. O. Olson, W. H. Sanders.

The Bowling Green Womens Club Co., Bowling Green, \$10,000. B. N. Bryant, Nettie E. Crass, Mary K. Herrieff, Frances A. Hankey, A. C. Baldwin, E. B. Halleck.

The H. W. Pfaus Reo Co., Wooster, \$20,000. H. W. Pfaus, J. W. Predmore, L. A. Careins, C. A. Moog, H. J. Pfaus.

The Bellevue Coal Co., Adena, \$100,000. L. S. Moscrip, Lee D. Shearer, W. H. Bernard, Henry Warner, H. M. Casner.

The Weidenthal Co., Cleveland, \$10,000. M. E. Meisel, P. Waldman, Ina Dustin, W. R. Weidenthal, L. Weidenthal.

The Toy Shoppe Co., Akron, \$10,000. W. G. Manley, Merle E. Rudy, A. C. Ruehling, R. F. Todd, O. E. Hoerger.

The Farmers and Potters Bldg. & Loan Co., Sebring, \$500,000. W. D. Peck, C. D. Hudson, I. D. Allen, W. R. East, E. A. O'Connor.

The Smokeless Oil Burner Co., Bucyrus, \$25,000. C. W. Moore, Marion Jesson, P. H. Ryder, E. W. Ryder, Dorothy Davenport.

The Maumee Hotel Co., Toledo, \$10,000. O. J. Smith, C. W. F. Kirkley, Zelma Harding, John B. McMahon, A. E. J. Dommann.

The Lake Milton Resort Co., Youngstown, \$500. F. P. Jackson, Wilber V. Saton, J. P. Meyer, A. A. Thomas, G. L. Meyer.

The Hidden Jewel Co., Columbus, \$500. L. Z. Curtin, A. O. Innis, G. W. Cofman, J. H. Cody, G. E. Levington.

The General Storage and Products Co., Toledo, \$50,000. E. W. Kelsey, Jr., R. P. Whitehead, H. S. Bugbee, F. A. Harrington, D. A. Finkbeiner.

Increase

The Hughes-Peters Electric Co., Columbus, \$100,000 to \$150,000.

PUBLIC UTILITIES COMMISSION

No. 2583—In the Matter of the Application of The Ohio Gas, Light and Coke Company, of Toledo, Ohio, for Authority to Issue \$8,-200,000, Par Value, of the Common Stock of the Preferred Stock of Said Company for the Purpose of Redeeming Bonds as They Mature.—Prayer Granted.

(Dated August 28, 1922.)

This day, it appearing to the Commission from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, this matter came on for consideration upon the application of The Ohio Gas, Light and Coke Company, (a corporation duly organized and existing under and by virtue of the laws of the State of Ohio), asking the consent and authority of this Commission to issue eight thousand, two hundred dollars, par value of its common or seven per cent. preferred capital stock, the proceeds arising from the sale thereof, at not less than eighty-five per centum of the par value of such capital stock, to be used to redeem seven thousand dollars, principal sum, of applicant's outstanding First Mortgage Bonds which mature upon the first day of June, 1923.

The Commission, being fully advised in the premises, finds from the pleadings and exhibits filed herein and its independent inquiry and investigation thereupon:

That, of the applicant's present outstanding mortgage bonds, \$7,000.00, principal sum, of its First Mortgage Bonds mature upon the first day of June, 1923, and must, upon or before said day, be paid and discharged or lawfully refunded, and,

That the issue of applicant's common capital stock of the par value of \$7,000.00 or its preferred capital stock of the par value of \$8,200.00 is reasonably required and the money to be procured thereby, necessary for the payment and discharge of its maturing indebtedness aforesaid,

and is satisfied that consent and authority for the issue and disposition of applicant's common capital stock of the par value of \$7,-000.00 or its preferred capital stock of the par value of \$3,200.00 should be granted. It is, therefore,

Ordered, That said The Ohio Gas, Light and Coke Company be, and hereby it is authorized to issue its common capital stock of the par value of seven thousand dollars (\$7,000.00) or its seven per cent. preferred capital stock of the par value of eight thousand, two hundred dollars (\$8,200.00), and that said capital stock shall be sold for the highest price obtainable but not less than the par value of said common capital stock nor less than eighty-five per centum of the par value of said preferred capital stock. It is, further

Ordered, That any discount arising from a sale of said preferred capital for less than the par value thereof shall be extinguished pursuant to the rules and regulations heretofore prescribed by this Commission. It is further

Ordered, That the proceeds arising from the sale of said capital stock shall be used to pay and discharge, on or before June first, 1923, \$7,000.00, principal sum, of applicant's First Mortgage Bonds which mature upon said date. It is further.

Ordered, That forthwith upon the applicant's payment of said maturing bonds, the same be cancelled and destroyed. It is further

Ordered, That the applicant make verified report to this Commission of the issue and disposition of its capital stock, the expenditure of the proceeds thereof, and the cancellation and destruction of said discharged bonds, pursuant to the terms and conditions of this order. It is further

Ordered, That in so far as the authority herein granted to issue applicant's common or preferred capital stock shall be exercised, the alternative authority herein granted shall thereupon expire, and that, in so far as said application asks consent and authority to issue common capital stock of the additional par value of one thousand, two hundred dollars, the same be, and hereby it is denied.

✽

No. 2477—In the Matter of the Application of The Payne-Antwerp Telephone Company for Authority to Issue Securities.—Prayer Granted.

(Dated August 23, 1922.)

This day, it appearing to the Commission from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, this matter came on for consideration upon the application of The

Antwerp-Payne Telephone Company, a corporation duly organized and existing under and by virtue of the laws of the state of Ohio, asking the consent and authority of this Commission to issue its common capital stock of the par value of \$40,000.00 and its seven per cent. preferred capital stock of the par value of \$3,800.00, such capital stock to be delivered, as fully paid, as the consideration for all the property, rights and other assets of The Antwerp Telephone Company, the purchase and acquisition of which, by the applicant, was this day consented to and authorized by the order made and entered in proceeding No. 2476.

The Commission, being fully advised in the premises, finds from the pleadings and exhibits filed herein and its independent inquiry and investigation thereupon:

That, for purchase and sale purposes, the value of all the property, rights and other assets of The Antwerp Telephone Company is not less than the sum of \$43,800.00, and

That the issue of applicant's common capital stock of the par value of \$40,000.00 and its preferred capital stock of the par value of \$3,800.00 is reasonably required and necessary for the acquisition of said property aforesaid,

and is satisfied that consent and authority for the issue and disposition of said capital stock should be granted. It is, therefore,

Ordered, That said The Antwerp-Payne Telephone Company be, and hereby it is authorized to issue its common capital stock of the par value of forty thousand dollars (\$40,000.00) and its seven per cent. preferred capital stock of the par value of three thousand, eight hundred dollars (\$3,800.00). It is further

Ordered, That said capital stock be, by the applicant, issued and delivered, at par, in full and final payment of the agreed consideration for all the property, rights and other assets of The Antwerp Telephone Company, the purchase and acquisition of which, by the applicant, was duly consented to and authorized by the order this day made and entered in proceeding No. 2476; nor shall said capital stock be issued for any other purpose whatsoever. It is further

Ordered, That the applicant make verified report to this Commission of the issue and disposition of said capital stock pursuant to the terms and conditions of this order. It is further

Ordered, That the finding hereinbefore set forth as to the value of said property and the within authorization of the capitalization of the consideration to be passed therefor, shall not be binding upon this Commission in any future proceeding involving rates and/or service.

**No. 2476—In the Matter of the Joint Application of The Antwerp Telephone Company and The Antwerp-Payne Telephone Company.
—Prayer Granted.**

(Dated August 23, 1922.)

This day, it appearing to the Commission from the verified allegations in said petition and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, this matter came on for consideration upon the joint application of The Antwerp Telephone Company and The Antwerp-Payne Telephone Company, corporations duly organized and existing under and by virtue of the laws of the state of Ohio, asking the consent to and approval, by this Commission, of the sale by said first named applicant and the purchase by the latter of all the property, rights and other assets of said The Antwerp Telephone Company, consisting, generally, of a telephone plant furnishing service in and about the villages of Antwerp and Payne and the adjacent territory in the counties of Paulding and Defiance, in the state of Ohio.

The Commission, being fully advised in the premises, finds from the pleadings and exhibits filed herein and its independent inquiry and investigation thereupon:

That, for purchase and sale purposes, the value of the property, rights and other assets of The Antwerp Telephone Company is not less than the sum of \$43,800.00, and

That the public will, upon such sale and purchase of said public utility property, be furnished adequate service for a reasonable and just rate, rental, toll or charge therefor,

and is satisfied that consent and authority for the said sale and purchase of such public utility property should be granted. It is, therefore,

Ordered, That said The Antwerp Telephone Company be, and hereby it is authorized to sell all of its property, rights and other assets to The Antwerp-Payne Telephone Company; and said The Antwerp-Payne Telephone Company hereby is authorized to purchase and acquire the same, and to pay therefore the agreed consideration of forty-three thousand, eight hundred dollars (\$43 800.00) in the manner and form provided by the order, this day made and entered in proceeding No. 2477. It is further

Ordered, That, forthwith upon the exercise of the authority herein granted, said parties file with this Commission schedules providing for their respective withdrawal from and inauguration of

service within the territory now served by means of said property. It is further

Ordered, That nothing herein shall be construed to be a consent to or approval, by this Commission, of any increase in rates or diminution of service within the territory now served by means of said property, nor shall the finding hereinbefore set forth as to the value of said property, rates and service, or the acquiescence in the passing of said agreed consideration be binding upon this Commission in any future proceeding involving rates and/or service.

✱

No. 2141—In the Matter of the Joint Application of The Columbus Natural Gas Company, The Medina Gas and Fuel Co., The Buckeye State Gas and Fuel Company, The Coshocton Gas Company and The Berea Pipe Line Company, for Permission to Transfer, and The Central Ohio Gas Company for Permission to Acquire the Properties of The Columbus Natural Gas Company, The Medina Gas and Fuel Company, The Buckeye State Gas and Fuel Company, The Coshocton Gas Company, and The Berea Pipe Line Company.—Prayer Granted.

(Dated August 23, 1922.)

This day, after full hearing, due notice of the time and place of which was given to all parties in interest, this matter came on for final consideration upon the joint application, as amended, of The Columbus Natural Gas Company, The Medina Gas and Fuel Company, The Buckeye State Gas and Fuel Company, The Coshocton Gas Company, The Berea Pipe Line Company and The Central Ohio Gas Company, (all, with the exception of said The Coshocton Gas Company, corporations duly organized and existing under and by virtue of the laws of the state of Ohio, and The Coshocton Gas Company, a corporation of the state of New Jersey, duly authorized to do business in the state of Ohio), asking the consent to and approval, by this Commission, of the sale and conveyance, by said first five named applicants, and the purchase and acquisition, by the last named applicant, of all the property, rights and other assets, subject to book account liabilities except liabilities to parent company and the surplus of the said respective applicants, of said The Columbus Natural Gas Company, The Medina Gas and Fuel Company, The Buckeye State Gas and Fuel Company, The Coshocton Gas Company and The Berea Pipe Line Company.

The Commission, being fully advised in the premises, and finds from the pleadings and exhibits filed herein, the evidence offered at the hearing thereupon, and its independent investigation of the books and property of said selling corporations:

That, for purchase and sale purposes, the value of all the property, rights and other assets of said The Columbus Natural Gas Company, The Medina Gas and Fuel Company, The Buckeye Gas and Fuel Company, The Coshocton Gas Company and Berea Pipe Line Company is not less than the sum of \$9,550,000.00, and

That the public will, upon the consummation of said proposed sale and purchase of said public utility property, be furnished adequate service for a reasonable and just rate, rental, toll or charge therefore,

and is satisfied that consent and authority for the sale and purchase of said public utility property should be granted. It is, therefore,

Ordered, That said The Columbus Natural Gas Company, The Medina Gas and Fuel Company, The Buckeye State Gas and Fuel Company, The Coshocton Gas Company and The Berea Pipe Line Company be, and hereby each of them is authorized to sell all of its property, rights and other assets (as the same are more fully enumerated and described in the exhibits filed herein, which exhibits hereby are made a part of this order by reference) to said The Central Ohio Gas Company; and said The Central Ohio Gas Company is hereby authorized to purchase and acquire said property, rights and other assets, subject to book account liabilities except liabilities to parent company and the surplus of each of said selling companies, and to pay therefore the agreed consideration of nine million, five hundred and fifty thousand dollars (\$9,550,000.00), in the manner prescribed by the order this day made and entered in proceeding No. 2142. It is further

Ordered, That, forthwith upon the exercise of the authority herein granted, said parties file with this Commission schedules providing for their respective withdrawal from and inauguration of service within the territory now served by means of said property. It is further

Ordered, That nothing herein shall be construed to be a consent to or approval by this Commission of any increase in rates or diminution of service within the territory now served by means of said property, nor shall the findings hereinbefore set forth as to the value of said property, rates and services, or the acquiescence in the passing of said agreed consideration be binding upon this Commis-

sion in any future proceeding involving rates and/or service. It is further

Ordered, That in all matter and causes pending before this Commission involving any of said selling corporations, applicants herein as aforesaid, the name of said The Central Ohio Gas Company be, and hereby it is substituted for the name of the respective selling applicant, and that said The Central Ohio Gas Company shall have and succeed to all the rights, and shall assume and be subject to all the liabilities, respectively, of said selling applicants in said matters and causes, and each of them.

✽

No. 2551—In the Matter of the Application of The Fort Loramie Lighting and Power Company to Issue and Dispose of \$30,000.00 Common and \$10,000.00 Preferred Capital Stock.—Prayer Granted.

(Dated June 2, 1922.)

This day, it appearing to the Commission from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, this matter came on for consideration upon the application of The Fort Loramie Lighting and Power Company, (a corporation duly organized and existing under and by virtue of the laws of the state of Ohio), asking the consent and authority of this Commission to issue and dispose of common capital stock of the par value of \$30,000.00 and eight per cent. cumulative preferred capital stock of the par value of \$10,000.00, and said common capital stock and \$8,000.00 of the proceeds of the preferred capital stock to be delivered and paid as the consideration for all the property, rights and other assets of The Fort Loramie Light and Power Company the purchase and acquisition of which, by the applicant, was duly consented to and authorized by the order this day made and entered in Proceeding No. 2550, and the proceeds arising from the sale of the balance of the preferred capital stock to be used to pay the applicant's organization expenses, etc. estimated to cost \$800.00, provide a stock of electrical supplies, costing \$700.00, and provide a working capital of \$500.00.

The Commission, being fully advised in the premises, finds from the pleadings and exhibits filed herein and its independent inquiry and investigation thereupon:

That, for purchase and sale purposes, the value of said

property, rights and other assets, so to be acquired from said The Fort Loramie Light and Power Company, is the sum of \$38,000.00;

That the expenses incident to the applicant's organization, etc. will be the sum of \$800.00;

That the applicant, for the prosecution of its business will require a stock of materials and supplies to cost \$700.00 and a working capital of \$500.00, and

That the issue of applicant's common capital stock of the par value of \$30,000.00 and its preferred capital stock of the par value of \$10,000.00 is reasonably required, and the money to be procured by the sale of said preferred capital stock necessary for the acquisition of property, the payment and discharge of obligations and the maintenance and improvement of applicant's service as aforesaid,

and is satisfied that consent and authority for the issue and disposition of said capital stocks should be granted. It is, therefore,

Ordered, That said The Fort Loramie Lighting and Power Company be, and hereby it is authorized to issue its common capital stock of the par value of thirty thousand dollars (\$30,000.00) and its eight per cent. cumulative preferred capital stock of the par value of ten thousand dollars (\$10,000.00), and that said preferred capital stock be sold for the highest price obtainable but not less than the par value thereof. It is further

Ordered, That said common capital stock and the proceeds arising from the sale of said preferred capital stock be issued and used for the following purpose, and no others, to-wit:

All of said common capital stock to be delivered, as fully paid and at par, and \$8,000.00 of the proceeds arising from the sale of said preferred capital stock to be paid as the full consideration for all of the property, rights and other assets of The Fort Loramie Light and Power Company, the purchase of which, by the applicant, was duly consented to by the order this day made and entered in proceeding 2550, which order hereby is made a part of this order by reference:

The balance of the proceeds from the sale of said preferred capital stock, viz: \$2,000.00 to be paid for the following purposes, to-wit:

The organization expenses and other costs incident to the inauguration of its business by the applicant, \$800.00.

The provision of an adequate stock of materials and supplies, \$700.00.

The provision of working capital, \$500.00.

It is further

Ordered, That the applicant make verified report to this Commission of the issue and disposition of said capital stocks and the

expenditure of the proceeds thereof pursuant to the terms and conditions of this order. It is further

Ordered, That the finding hereinafore set forth as to the value of said property, to be acquired of The Fort Loramie Light and Power Company and the within authorization of the capitalization of the consideration to be passed therefore, shall not be binding upon this Commission in any future proceeding involving rates and/or service.

*

No. 2559—In the Matter of the Proposed Increased Authorization of the Capital Stock of The Ada Water and Light Company From \$30,000.00 to \$60,000.00.—Prayer Granted.

(Dated June 1, 1922.)

This day, it appearing to the Commission from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, this matter came on for consideration upon the application of The Ada Water and Light Company, (a corporation duly organized and existing under and by virtue of the laws of the state of Ohio), asking the consent and authority of this Commission to issue and deliver, at par, thirty thousand dollars, par value, of common capital stock in discharge of promissory notes heretofore issued by the applicant in evidence of its indebtedness on account of a loan of \$30,000.00, which, thereafter, was invested in additions, extension and improvements to its facilities.

The Commission, being fully advised in the premises, finds from the pleadings and exhibits filed herein and its independent inquiry and investigation thereupon:

That the applicant now is indebted in the sum of \$30,000.00, evidenced by three (3) promissory notes of \$10,000.00 each, given to Thomas M. Kier, C. B. Slack and Fenwick Ewing, for and on account of the investment of such sum, heretofore loaned the applicant by said individuals, in additions, extensions and improvements to applicant's plant and facilities, and

That the issue and delivery, at par, of applicant's common capital stock of the par value of \$30,000.00 is reasonably required and necessary for the discharge or lawful refunding of the aforesaid indebtedness,

and is satisfied that consent and authority for the issue and dispo-

sition of said common capital stock should be granted. It is, therefore,

Ordered, That said The Ada Water and Light Company be, and hereby it is authorized to issue its common capital stock of the par value of thirty thousand dollars (\$30,000.00). It is further

Ordered, That said capital stock be issued at par and delivered, as fully paid, to Thomas M. Kier, C. B. Slack and Fenwick Ewing, in full satisfaction of the promissory notes of the applicant of the total principal sum of thirty thousand dollars now held by them in evidence of loans, of that sum, which has been invested in additions, extensions and improvements to applicant's plant and facilities. It is further

Ordered, That, forthwith upon the acquisition of said promissory notes, the applicant cancel and destroy the same. It is further

Ordered, That the applicant make verified report to this Commission of the issue and disposition of said capital stock and the cancellation and destruction of said promissory notes pursuant to the terms and conditions of this order.

✽

Advanced Utility Rate Proceeding No. 96.—In the Matter of the Proposed Increased Rates and Charges of The Windham Electric Company for Electric Service, Filed to Become Effective August 1, 1922.

(Dated September 6, 1922)

The complainants herein, having this day filed written request for the withdrawal of the complaint heretofore filed against The Windham Electric Company's schedule P. U. C. O. No. 1, which schedule was suspended by order of this commission dated July 29th, 1922, and The Windham Electric Company, by the filing of an undertaking herein, having charged the increased rates carried in its said schedule from the date on which said schedule was published to become effective, it is

Ordered, That the order heretofore made and entered herein suspending the going into effect on the first day of August, 1922, of The Windham Electric Company's schedule designated P. U. C. O. No. 1, publishing rates and charges for electric service at Windham, Ohio, be, and hereby is vacated, and that this proceeding, be, and hereby it is discontinued.

No. 2618—In the Matter of the Petition of The Northwestern Light & Power Company for Permission to Issue Certain of Its Common and Preferred Stock.—Prayer Granted.

(Dated September 5, 1922)

This day after full hearing, due notice of the time and place of which was given to all parties in interest, this matter came on for consideration upon the application of The Northwestern Light & Power Company, (a corporation duly organized and existing under and by virtue of the laws of the State of Ohio), asking the consent and authority of this commission to issue its common capital stock of the par value of \$9,000.00 and its seven per cent preferred capital stock of the par value of \$18,000.00; said common capital stock to be issued and delivered, as fully paid, in discharge of applicant's indebtedness for and on account of its projection, organization and other preliminary activities, and the proceeds arising from the sale of said preferred capital stock to be used to purchase materials and construct an electrical distribution system in Lucas and Wood counties, State of Ohio.

The commission, being fully advised in the premises, finds:

That the applicant has in contemplation the expenditure of the total sum of \$36,380.69 for the discharge of obligations already incurred in connection with its organization, etc., and the construction and equipment of a system for the distribution of electrical energy for public and private use in Oregon township, Lucas county, and Ross township, Wood county, Ohio, and

That the issue of applicant's common capital stock of the par value of \$9,000.00 and its preferred capital stock of the par value of \$18,000.00 is reasonably required, and the money to be procured thereby necessary for the payment and discharge of its indebtedness and the construction, completion, extension and improvement of its facilities as aforesaid,

and is satisfied that consent and authority for the issue and disposition of said capital stock should be granted. It is, therefore,

Ordered, That said The Northwestern Light & Power Company be, and hereby it is authorized to issue its common capital stock of the par value of nine thousand dollars (\$9,000.00) and its seven per cent preferred capital stock of the par value of eighteen thousand dollars (\$18,000.00), and that said preferred capital stock be sold for the highest price obtainable but not less than the par value thereof. It is further

Ordered, That said common capital stock be issued, as fully

paid, and delivered, and the proceeds arising from the sale of said preferred capital stock expended for the following purpose, and no other, to wit: In discharge of applicant's indebtedness, heretofore incurred or hereafter to be created, for and on account of its projection, organization and other preliminary activities and the purchase of materials and the construction and equipment of a system for the distribution of electrical energy for public and private use in the townships of Oregon, in Lucas county, and of Ross, in Wood county, Ohio, all as more particularly set forth in the detailed statements offered in evidence upon the hearing of this matter, (which exhibits hereby are made a part of this order by reference) and the total of which is the sum of \$36,380,69. It is further

Ordered, That the applicant make verified report to this commission semi-annually, within fifteen days after the close of each calendar, semi-annual period of the issue and disposition of said capital stock and, in reasonable detail, the expenditure of the proceeds thereof pursuant to the terms and conditions of this order.

✱

No. 2367—In the Matter of the Joint Petition of The Ohio Bell Telephone Company and The Ohio State Telephone Company for the Consent of the Public Utilities Commission of Ohio to and Their Approval of the Consolidation of Said Two Companies Under the Name of The Ohio Bell Telephone Company. Prayer Granted.

(Dated September 5, 1922)

This day, after full hearing, due notice of the time and place of which was given to all parties in interest, this matter came on for consideration upon the application of The Ohio Bell Telephone Company for an order fixing and determining the rates to be charged by it for unified service within its London and Sedalia, Ohio, service area, and the record made upon said hearing.

The commission, having made an independent investigation of the company's property and books, and taking into consideration the testimony and exhibits offered at said hearing aforesaid, and having due regard for the value of the company's property, used and useful for the furnishing of unified service in said service area, the probable revenues which will arise from the furnishing of such service, and the cost of furnishing the same as well as the necessity of making reservation from income for depreciation and other contingencies, finds that the proposed rates for such service, set forth in the proposed schedule offered and introduced in evidence

upon said hearing as "Barry Exhibit No. 3" are not unjust, unreasonable, excessive or discriminatory and will not return said company a greater rate of return than it is entitled to earn upon said property, so devoted to the use of its subscribers and the public in said service area. It is, therefore,

Ordered, That, upon the complete unification of the plant and facilities of The Ohio Bell Telephone Company in its London and Sedalia, Ohio, service area, said company may establish and thereafter maintain, impose and collect for the furnishing of unified service in said area, the rates, charges, tolls and rentals hereinbefore found to be not unreasonable, unjust, excessive or discriminatory. It is further

Ordered, That schedules be filed accordingly.

J

No. 1197—In the Matter of the Joint Application of The Steubenville and East Liverpool Railway & Light Company, The East Liverpool Traction & Light Company and The Buckeye Power Company, for the Latter to Issue Certain Stocks and Bonds, and for the First Two Named Companies, After Their Merger With The Ohio River Passenger Railway Company, to Issue Certain Stocks and Bonds for the Reorganization and Readjustment of Their Indebtedness and Capitalization in Accordance With the Proposed Agreement of Consolidation. Supplemental Order.

(Dated August 30, 1922)

The commission having heretofore, by order duly made and entered herein upon the twenty-third day of July, 1917, among other things, consented to and authorized The Steubenville, East Liverpool and Beaver Valley Traction Company to issue, in pursuance of the plan and agreement for the reorganization and readjustment of the indebtedness of The Steubenville & East Liverpool Railway and Light Company, The East Liverpool Traction and Light Company and The Ohio River Passenger Railway Company, its first and refunding mortgage, five per cent, thirty-year bonds of the principal sum of one million, six hundred thousand dollars (\$1,600,000.00), comes now said The Steubenville, East Liverpool & Beaver Valley Traction Company and, by its supplemental petition and statement, this day filed herein, represents and shows to the commission:

That, at the time of the making and filing of the application herein, and the making and entering of said order afore-

said, the mortgage deed of trust securing the payment of said bonds aforesaid provided that such bonds, issued thereunder, should be of the denomination of one thousand dollars;

That it has developed that the proposed reorganization of the applicant's constituent companies cannot be fully consummated with said bonds of said denomination, and

That, to permit of the consummation of said reorganization of said indebtedness, the said mortgage deed of trust has been amended to permit and provide for the issue of ninety-five thousand dollars of the bonds to be issued thereunder in bonds of the denomination of five hundred dollars each, and eighty-five thousand dollars, principal sum, of said bonds in bonds of the denomination of one hundred dollars each,

and asks that said order, so made and entered herein upon said twenty-third day of July, 1917, be modified, amended and supplemented accordingly.

Upon consideration whereof, and being fully advised in the premises, the commission finds that such modification and amendment of said order, of date July 23d, 1917, is reasonably required and necessary to permit of the consummation of said proposed reorganization and readjustment of said indebtedness. It is, therefore,

Ordered, That the order, made and entered herein upon the twenty-third day of July, 1917, and marked and identified as "Order B" be, and hereby the same is modified, amended and supplemented to provide that, of the one million, six hundred thousand dollars (\$1,600,000.00), principal sum, of first and refunding mortgage, five per cent, thirty-year bonds, therein authorized to be issued and disposed of by said The Steubenville, East Liverpool & Beaver Valley Traction Company, not exceeding ninety-five thousand dollars (\$95,000.00), principal sum, thereof, may be issued in bonds of the denomination of five hundred dollars (\$500.00) each, and not exceeding eighty-five thousand dollars (\$85,000.00), principal sum thereof, may be issued in bonds of the denomination of one hundred dollars (\$100.00) each. It is further

Ordered, That applicant's said bonds of the principal sum of one hundred and eighty thousand dollars (\$180,000.00), in lieu whereof the aforesaid bonds of the denominations of five hundred dollars and one hundred dollars each are issued shall, forthwith upon the authentication and issue of said bonds of the denominations of five hundred dollars and one hundred dollars each, be cancelled and destroyed, and that verified report of such cancellation and destruction of said bonds be made to this commission.

ATTORNEY GENERAL

The Industrial Commission Has Not at the Present Time the Authority to Abolish the Positions Held by These Persons Who Have Been Heretofore Designated as the Board of Boiler Rules, Nor Any Other Position Formerly Established by the Commission Under the Section 871-14, General Code. The Commission Has Unquestioned Authority to Create a Board of Advisers to Serve Without Compensation.

No. 3289—(Opinion Dated July 3, 1922)

Department of Industrial Relations, Hon. Percy Tetlow, Director,
Columbus, Ohio.

Gentlemen: You have requested the advice of this department as follows:

"I am submitting for your consideration a question at law which arises between the Director of Industrial Relations and the Industrial Commission of Ohio regarding the director's appointment of Herbert F. Cook to fill a vacancy in the Ohio Board of Boiler Rules caused by the death of H. A. Baumhart.

The statute creating the Ohio Board of Boiler Rules provided that said board would be appointed by the Boiler Division, with the approval of the governor, and that the salary would be \$1,000 per annum. The Industrial Commission act,—Section 871-11,—permitted the legal existence of this board. On and after the first day of September, 1913, the board was superseded by the Industrial Commission. The records of the Industrial Commission, the journal entry, disclose that by resolution, acting under Section 871-14, the commission created the Ohio Board of Boiler Rules in the same manner, and within the same resolution, as were the Chief Inspector of Mines, the Chief Inspector of Workshops and Factories and the Chief Examiner of Steam Engineers, the employees, with their salaries, being enumerated for each division.

The salary of the members of the Board of Boiler Rules was fixed at \$10 per diem when rendering active service in the capacity as a member of the board, with expenses incident thereto. They receive the salary fixed by the commission with all legitimate expenses in connection with their duties.

The director of industrial relations preceeded to fill the vacancy caused by H. A. Baumhart's death and made the appointment, as stated above, of Herbert F. Cook, of Cleveland, assuming that the board was created by the commission in the same manner as other employees under Section 871-14, and that

he was acting only within his rights in the filling of such vacancy.

The industrial commission in business session, May 12, 1922, by a majority vote, abolished the Ohio Board of Boiler Rules. The commission then by a majority vote proceeded to appoint a new board to act in an advisory capacity to the Industrial Commission, the commission indicating that this action was taken under Section 154-45, General Code. (Copy of such action is herewith enclosed.)

One legal point in question which I desire to present is whether or not the industrial commission of Ohio has authority to abolish the board of boiler rules, or any office established by them under Section 871-14, as indicated by the journal record of August 30, 1913.

Second, another point at issue is whether the commission, under Section 154-45, General Code, has the right to abolish the board of boiler rules.

Third, if the act of the commission abolishing the board of boiler rules, under Section 154-45, is legal and one coming within their jurisdiction, can the members of such board receive compensation for their services?

I might state that the governor of Ohio in a communication addressed to the industrial commission advised such commission that the power of appointment and removal of all employes should be deemed as resting within the Department of Industrial Relations."

Attention will first be given to the state of the law governing this subject as it was under the act creating the Industrial Commission of Ohio and prior to the enactment of the Administrative Code of 1921. In the first place, there had been prior to 1913 a state board known as the Board of Boiler Rules, but this board ceased to exist as such on September 1, 1913, under Section 871-11 of the General Code, which provided as follows:

"On and after the first day of September, 1913, the following departments of the State of Ohio, to wit: * * * board of boiler rules * * * shall have no further legal existence, except that the heads of the said departments, and said boards, shall within ten days after the said date submit to the governor their reports of their respective departments for the portion of the year 1913 during which they were in existence, and on and after the first day of September, 1913, the industrial commission of Ohio shall have all the powers and enter upon the performance of all the duties conferred by law upon the said departments."

In this same connection, Section 371-24 should be observed. It provides as follows:

"All duties, liabilities, authority, powers and privileges conferred and imposed by law upon the * * * board of boiler rules * * are hereby imposed upon the industrial commission of Ohio and its deputies on and after the first day of September, 1913.

All laws relating to the * * * board of boiler rules * * * on and after the first day of September, 1913, shall apply to, relate and refer to the industrial commission of Ohio, and its deputies. Qualifications prescribed by law for said officers and their assistants and employees shall be held to apply, wherever applicable, to the qualifications of the deputies of the commission assigned to the performance of the duties not cast upon such officers, assistants and employees."

At the same time the commission was given the following powers:

"Sec. 871-14. The commission is authorized and empowered to employ, promote and remove a secretary, or secretaries, deputies, clerks, stenographers, and other assistants, as needed; to fix their compensation, and to assign to them their duties. Such employments and compensation to be first approved by the governor."

"Sec. 871-22. It shall also be the duty of the industrial commission, and it shall have full power, jurisdiction and authority:

(1) To appoint advisers, who shall without compensation, assist the industrial commission in the execution of its duties; to retain and assign to their duties any or all officers, subordinates and clerks of the * * * board of boiler rules. * * *"

The commission then in 1913 had the power to employ deputies and assistants for such purpose, retaining and assigning to their duties any officers or employees in the abolished departments, the functions of which the commission then took over; and the commission also had the power to appoint advisers to serve without compensation in assisting the Industrial Commission in the execution of its duties. It could have done either or both in any case requiring action in the organization of the department of the Industrial Commission; that is, it could have employed deputies or assistants in any of the divisions which supplemented the former department, and it could also have appointed advisers to serve without compensation. It had the express power to remove those whom it employed, and it had the power necessarily implied to abolish positions of this character by simply removing the incumbent of such

position, and assigning his duties to some other employe or taking them over itself. The commission could, at the same time, do away with advisers appointed by it by the simple expedient of failing to call upon them for assistance. In short, both employes and advisers were creatures of the industrial commission, having no independent functions whatever, and no existence independent of the will of the commission. Obviously, however, the two kinds of duties were distinct. The same person could not well have been an adviser serving without compensation as such, and an employe serving with compensation at one and the same time.

It appears from your letter that the board of boiler rules about which you are inquiring was created as a group of deputies or assistants of the commission. It was not and is not, strictly speaking, a board. Some doubt is engendered by your reference to it as such. Yet, on the whole it is believed that it was competent for the commission to effect such a grouping of employes in its service as to require of them united action within the scope of the duties assigned to them. Certainly the persons appointed on this new board of "boiler rules" seem to have been regarded as employes, for their compensation was fixed, which could not lawfully have been the case had they been appointed as advisers. In view of the long continued practice of the industrial commission, this department is disposed at this time to assume the legality of the original designation of these persons as employes, assistants or deputies of the industrial commission and the allowance to them of compensation, though this question is not entirely free from doubt. Being employes, they were not originally to be classed as advisers.

Had the law continued in the condition which has been described, it would have been competent for the industrial commission, as previously stated, to abolish these employments and to designate or appoint advisers to assist the commission in discharging its functions pertaining to boiler rules. However, the enactment of the Administrative Code did change the law in this particular. Section 154-45 of the General Code provides as follows:

"The department of industrial relations shall have all powers and perform all duties vested by law in the industrial commission of Ohio, excepting the following:

Those powers and duties of the commission which it exercises as successor of the state liability board of awards, the state board of arbitration, the board of boiler rules, and in the investigation, ascertainment and determination of standards, devices, safeguards, and means of protection, being all powers and duties mentioned in Paragraphs 3 to 8, both inclusive, of

Section 871-22 of the General Code, Sections 871-23, 871-26, 871-27, 871-28, 871-30, 871-32, 871-33, 871-34 and 871-35, Sections 1058-8 to 1056-12, both inclusive, 1058-16, 1063, to 1077, both inclusive, and Sections 1465-37 to 1465-108, both inclusive, of the General Code, and the powers of the commission as successor of the board of boiler rules under Section 1058-18 of the General Code, which shall continue to be exercised and performed by the industrial commission of Ohio in the manner provided by law for the exercise of such powers and the performance of such duties.

The industrial commission of Ohio shall be a part of the department of industrial relations for administrative purposes in the following respects: The director of industrial relations shall be ex-officio the secretary of said commission, shall succeed to and perform all of the duties of the secretary of said commission, and shall exercise all powers of said secretary as provided by law; but such director may designate any employee of the department as acting secretary to perform the duties and exercise the powers of secretary of the commission. All clerical, inspection and other agencies for the execution of the powers and duties vested in the said industrial commission shall be deemed to be in the department of industrial relations, and the employees thereof shall be deemed to be employees of said department and shall have and exercise all authority vested by law in the employees of such commission. But the industrial commission of Ohio shall have direct supervision and control over, and power of appointment and removal of, such employees whose position shall be designated by the governor as fully subject to the authority of such commission.

The commission may appoint advisers, who shall without compensation assist the commission in the execution of the powers and duties retained by it under this section."

This section begins by transferring to the department of industrial relations from the industrial commission all the powers and duties of the industrial commission, with the exceptions named in the second paragraph. One of these exceptions is the powers and duties of the commission which it exercises as the successor of the board of boiler rules. This power, however, does not include the power to appoint the board of boiler rules as employees, deputies or assistants of the commission. The power formerly exercised by the commission owed its existence to Section 871-14 of the General Code, above quoted, and this power is one that is transferred to the department of industrial relations, not being one of the excepted powers enumerated in the second paragraph of Section 154-45. In other words, the power which the commission formerly had to employ, promote or remove deputies, secretaries and other assistants

under Section 871-14 was transferred by Section 154-45 of the General Code, a section of later enactment, to the department of industrial relations. All that has been hereinbefore said therefore with respect to the plenary authority of the industrial commission under the former law to create and abolish positions in the nature of employments now applies to the department of industrial relations under and by virtue of the transfer clause found in Section 154-45. In this same connection, see Section 154-24 of the General Code, which provides in part as follows:

"Whenever rights, powers or duties which have heretofore been vested in or exercised by any officer, board, commission, institution or department, or any deputy, inspector or subordinate officer thereof, are, by this chapter, transferred, either in whole or in part, to or vested in a department created by this chapter, or any other department, office or institution, such rights, powers and duties shall be vested in, and shall be exercised by the department, office or institution to which the same are hereby transferred, and not otherwise. * * *

It is therefore not even necessary to look to Section 154-19 for the authority of the department of industrial relations to exercise the powers mentioned in Section 871-14, which was not repealed by the Administrative Code. However, said Section 154-19 provides in part as follows:

"Each department is empowered to employ, subject to the civil service laws in force at the time the employment is made, the necessary employees, and, if the rate of compensation is not otherwise fixed by law, to fix their compensation. Nothing in this chapter shall be construed to amend, modify or repeal the civil service laws of the state, except as herein expressly provided."

Going further in Section 154-45, the conclusion already reached is strengthened by the latter part of the third paragraph of the section above quoted. You state in your letter that the authority reposed in the governor by the last sentence of the paragraph was not exercised, so that none of the employees whose functions constitute clerical, inspection and other agencies for the exercise of the powers and duties of the industrial commission have been designated as fully subject to the authority of the commission.

It should be observed that the power of the commission to appoint advisers is expressly reserved by the last paragraph of Section 154-45.

The conclusion is therefore forced that the industrial commis-

sion has not at the present time the authority to abolish the positions held by those persons who have heretofore designated as the board of "boiler rules," nor any other position formerly established by the commission under Section 871-14 of the General Code. This statement answers all of your questions.

However, this department feels constrained to go a step further and to point out that the commission has unquestioned authority to create a board of advisors, to serve without compensation. So much, therefore, of the commission's recent resolution as creates the board of advisors would, if standing by itself, be lawful. The enclosed copy of the commission's resolution, however, shows that the two acts of the commission cannot be readily separated. Therefore, in the opinion of this department, the entire resolution was nugatory.

SECRETARY OF STATE

NEW INCORPORATIONS

The Supreme Realty and Constr. Co., Cleveland, \$25,000. J. B. Dwor-ken, M. Stern, M. L. Rothman, H. Freedman, A. G. Apple.

The Lighting Fixture Shop Co., Canton, \$15,000. A. A. Grogan, L. V. Lothamer, N. M. Lothamer, R. L. Lothamer, V. X. Volzer.

The Evans Adjustment Co., Cleve-land, \$10,000. W. E. Francies, A. S. Johnson, E. A. Francies, R. E. John-son.

The Ohio Guaranteed Mortgage Co., Columbus, \$10,000. I. H. Schlezinger, Benj. F. Levinson, H. L. Kime, L. K. Wagner, R. Thomas.

The Katz-Rothstein-Horvitz Furni-ture Co., Cleveland, \$20,000. Nathan Katz, Adolph Jaffe, M. H. Rothstein, Hyman Horvitz, W. W. Rosenzweig.

The National Provision Fiscal Co., Cleveland, \$5,000. N. M. Gottschalt, S. Graham, C. M. Vrooman, F. J. Young, R. H. Davis, C. M. Vrooman.

The Warren Hotels Operating Co., Warren, \$50,000. M. B. Taylor, Jr., Elizabeth Baldwin, Ruth Whitney, M. S. Bishop, Helen Schoenberger.

The Independent Loose Leaf Ware-house Co., Ripley, \$10,000. Herbert Whitley, Joseph Klinker, A. O. White, Martin Klinker, Albert Whisner.

The General Welding Co., Cleve-land, \$5,000. J. F. Walker, A. G. Levine, Wm. J. Krull, L. M. Wilson, J. A. Klein.

The Evergreen Realty Co., Youngs-town, \$10,000. R. F. Bock, E. L. Don-ahay, John Rothwell, W. E. Rowland, Arthur Morgan.

The Allied Products Co., Cleveland, \$100,000. J. A. Hadden, J. H. Kann, H. E. Chenowith, H. Kappler, A. Mc-Nally.

The Thorpe Constr. Co., Cleveland, \$10,000. F. C. Friend, G. A. Boone, J. G. Reyant, F. M. Whheldin, E. E. Brooks.

The West Point Oil and Gas Co., Steubenville, \$100,000. T. J. Need-ham, M. E. McSwiggen, Marc J. Wes-mon, W. S. Radinsky, M. Silverman.

The Phoenix Portland Cement Co., Columbus, \$500. M. Garner, I. R. Howarth, L. A. Des Autels, D. B. Pember, V. M. Hollopeter.

The Gruber Push-Lock Co., Cleve-land, \$50,000. H. E. Kohen, Eugene Bloomberg, I. S. Hurwitz, H. J. Mar-low, A. Barbian.

The Eighteenth St. Realty Co., To-ledo, \$10,000. V. Barnes, R. Fauble, T. E. Deihlman, L. B. Mueller, M. L. Haden.

The Lake Avenue Coal and Supply Co., Elyria, \$10,000. O. G. Sheppard, Estella Sheppard, I. D. Seiler, Jessie Seiler, I. J. Sheppard.

The Niagara Stone Products Co., Bellefontaine, \$200,000. C. W. Hart, D. A. Frampton, Wm. J. Hyde, I. D. Williams, J. C. Byers.

The Hicks Co., Dennison, \$20,000. A. P. Daberko, I. Daberko, C. M. Perry, L. E. Hicks, J. H. Hicks.

The Spencer Mfg. Co., Spencer, \$300,000. J. B. Childe, W. D. Carver, Otto Kuepfer, A. B. Reese, L. E. Dilts.

The Beneficial Bond Co., Cleveland, \$1,000. C. L. Sheil, C. S. Reed, Thos. Stevenson, L. Kachel, C. E. Mellen.

The Mt. Gilead Svcs. & Loan Co., Mt. Gilead, \$300,000. E. S. Masters, W. A. Jollay, M. W. Clenn, L. Dye, C. E. Wagner.

The Ryland Realty Co., Cincinnati, \$30,000. B. Lee Hutchinson, E. H. Matthews, J. W. Matthews, C. M. Skillman, Sherman Adler.

The Civic Savings and Loan Ass'n., Co., Cleveland, \$1,000,000. Fred A. Harmon, Joy S. Hurd, Burt W. Griffin, Harry B. Hoener, Merceda Glora.

The Canton Glibe Clothing Co., Can-ton, \$20,000. Sam Eisenberg, M. Eis-enberg, Sam Sharff, P. P. Sharff, Mary Safranek.

The Superior Restaurant & Deli-catessen o., Cleveland, \$10,000. M. W. Bruml, Joseph G. Stashower, Leonard S. Levy, C. I. Goldsmith, H. S. Gold-smith.

The Steel's Department Stores Co., Cleveland, \$500. Wm. H. McMorris, Harry W. McLeod, Chas. I. Russo, Earl N. Clark, Cedric G. Smith.

The George H. Newstedt Co., Cin-cinnati, \$100,000. J. A. Culbertson, Walter M. Locke, G. Jolly, George H. Newstedt, Oliver S. Bryant.

The Buckeye Transportation Co., Hamilton, \$50,000. George Gardner,

Albert Sprauer, John Ziepfel, Frank Mayo, Emil Uhrman, Frank Pio.

The Peacock Shop Co., Toledo, \$10,000. Otto H. Spengler, Eva P. Maxwell, Sholto M. Douglas, C. F. Lee, A. D. MacMillan.

The Western Reserve Constr. Co., Cleveland, \$10,000. Cincenzo Menniello, Pasquale Composarcono, Dominico Trivisono, Anthony J. Trivisono, Rudolph A. Verbeck.

The Custer Specialty Co., Dayton, \$10,000. L. Luzarn Custer, M. G. Custer, C. J. Moore, L. E. Custer, E. Z. Custer.

The New American Laundry Co., Columbus, \$50,000. Fred C. Janton, A. B. Rankin, J. M. Houck, Fritz C. Janton, Harley L. Stoneburner.

The Ohio and West Virginia Coal Co., Columbus, \$50,000. D. H. Armstrong, D. F. Shafer, E. R. Davis, S. M. Hanley, O. P. Amann.

The Highland Catering Co., Akron, \$500. Harry Stover, Helen Stover, Amanda H. Friedrich, William C. Friedrich, Chalmers M. Hamill.

The New Middletown Industrial Alcohol Co., New Middletown, \$25,000. Michael A. DiMenna, David Palmero, Nick Carmelo, D. K. Scall, J. M. Modarelli.

The Dayton Novelty & Specialty Co., Dayton, \$10,000. Abe S. Jacobc, Besie Jacobs, R. E. Marrs, B. R. Shaman, Clara Seybold.

The Harness Oil & Gas Co., Marietta, \$25,000. R. C. Britton, C. A. Harness, G. W. Harness, L. N. Harness, G. M. McGee.

The East Cleveland Monitor Co., E. Cleveland, \$25,000. A. E. Griffith, A. H. Fiebach, H. A. Shibley, G. A. Pettit, Robt. J. Sachs.

The Wm. Rolf Builders Supply & Fuel Co., Cleveland, \$50,000. Wm. Rolf, Ida Rolf, Mary Rolf, Hazel Rolf, Emma Rolf.

The Ironton Boiler Works Inc., Co., Ironton, \$50,000. Patrick Meehan, James Leo Meehan, Patrick I. Meehan, Paul F. Meehan, Mary E. Meehan.

The Leonard Apparel Co., Cincinnati, \$50,000. Henry L. Lapkin, Leon TheA. Rosenthal, Harry L. Cohen, Jean L. Cohen, Nelson J. Cohen.

The Troy Realty Co., Troy, \$65,000. L. H. Shipman, H. L. Johnston, Harold A. Pauly, J. P. Fullerton Jr., S. G. Leitch.

The Equity Trading Ass'n. Co., Cleveland, \$5,000. Earl F. Butler, C.

J. Monahan, Mary E. Butler, Louise Butler, C. W. Butler.

The Highland Farms Co., Middletown, \$75,000. J. T. Crawford, W. Walker Lewis, A. J. Beatty, W. T. Harrison, Douglas Robbins.

The Nnadilla Investment Co., Cleveland, \$2,000. John A. Nieding, W. Carver, Rebecca E. Miller, E. I. Carnes.

The Glenside Club of Cleveland Co., Cleveland, \$500. M. E. Simmerly, E. Toska, F. E. Murphy, G. E. Dreher, L. L. Goodman.

The W. E. Ferris Co., Cleveland, \$500. Signey B. Rosenbaum, Norton McGiffin, Ernest H. Bevier, Jerome T. Lichtig, W. F. Maurer.

The United States Steel Container Co., Cleveland, \$500. R. J. Lamb, F. M. Conley, P. M. Kuederle, J. L. Vaughan, T. D. Lamb.

The Eu-Co-Cide Chemical Co., Cleveland, \$65,000. H. R. Brownlee, R. A. Walmsley, Richard J. Moriarty, John E. Gallagher, John L. Weisend.

The Meteorite Co., Cleveland, \$500. Wm. C. Keough, Frank Mooney, B. Buechner, Francis H. Beam, L. Leppla.

The Hunt Delivery Co., Youngstown, \$10,000. C. F. Wilkins, H. L. Hunt, Ralph Dietz, F. L. Crumbacher, Guy T. Ohl.

The Malcyon Co., Cleveland, \$50,000. William Rothenberg, Samuel Horwitz, Joe B. Kiefer, E. R. Walters, A. E. French.

The Jobs Coal and Mining Co., Nelsonville, \$25,000. F. M. Rosser, Pearl M. Rosser, Clell Douglas, D. W. Gibson, F. L. Gibson.

The Consumers' & Manufacturers' Fuel Co., Columbus, \$500. E. J. Willsey, J. M. Elliott, H. S. Miller, F. Meagher, C. L. Dierker.

The Doric Realty Co., Cleveland, \$100,000. B. C. Boer, Leona M. Wyler, Wayne E. Miller, J. Wilbur Corry, Ira E. Arnold.

The Nitro Lumber and Supply Co., Columbus, \$10,000. J. M. Schooler, Harold L. Kime, Carl H. Valentine, L. K. Wagner, H. A. Toland.

The Combustion Appliance Co., Cleveland, \$10,000. Stanley R. Hardwick, Willis L. Holloway, Gus W. Peterson, Louis B. Eifert, Blase A. Buonpane.

The Superior Paint Co., Toledo, \$20,000. Reinhold C. Ahrendt, Stuart S. Wall, Reinhold J. Ahrendt, Stacy L. McNary, Rosenwell A. Ahrendt.

The Crawford-Wheeler Coal Co., Cadiz, \$25,000. Henry E. Crawford, John W. Crawford, Clyde Wheeler, Frank B. Grove, W. C. Clifford.

The Cryer and Cox Shoe Co., Cincinnati, \$20,000. Harry C. Cryer, C. J. McDiarmid, Marie C. Heink, Agnes Esche, M. C. Slutes.

The Minerva Ice Co., Minerva, \$25,000. Charles C. Cooper, Herman Cooper, Paul Weaver, Jacob Weaver, Jefferson Cooper.

The Greyshire Co., Toledo, \$10,000. Edwin J. Lynch, John W. Hackett, Stanley A. Grzezinski, Frank M. Hackett, Alfred W. Shea.

The States Tire & Service Co., Toledo, \$10,000. Bert Keenan, William J. Moffitt, A. W. Shea, Frank M. Hackett, Edwin J. Lynch.

The Harold Oil & Gas Co., Marion, \$50,000. Frank A. Huber, Charles S. King, Hector S. Young, H. K. Mouser, Frank Morrisson.

The Royer-Brunner Co., Cleveland, \$25,000. Ira I. Royer, C. R. Brunner, Mae E. Brunner, Elizabeth M. Royer, Chas. J. Cook.

The Mitchell Beville Co., Cleveland, \$1,000. Rob't. C. Mitchell, John M. Beville, Frank F. Gentsch, L. Q. Rawson, F. M. Pritts.

The Lyman Manufacturing Co., Cleveland, \$1,000. Kent E. Lyman, Anna G. Lyman, Mary L. Hogan, D. D. Hurlbut, Wm. G. Benedict.

The Sand Beach Co., Toledo, \$500. Harry W. Buckley, Charles L. Daggett, Merle A. Brown, Otto L. Hankinson, Charles D. Forster.

The Seneca Mills Paper Co., Cleveland, \$10,000. Anthony F. Gaughan, R. E. Collins, T. A. Gillespie, E. E. Thomas, Patrick J. Collins.

The B. B. Department Store Co., Cleveland, \$25,000. Ben Barasch, Elsie Barasch, Isidore Stern, E. R. Ginsburg, Moses Ginsburg.

The Penn Coal Co., Columbus, \$50,000. J. W. Bolwer, E. W. Blower, Ethel Voelker, Ruth Blower, S. J. Lewis.

The P. E. Welston Engineering Co., Akron, \$60,000. P. E. Welton, W. C. Workman, H. E. Welton, George H. Wadsworth, E. R. Bond.

The Atomized Coal Co., Cincinnati, \$10,000. Russell Errett, John P. Errett, F. W. Geiger, F. P. Glosch.

The Marietta Penny Profit General Store Co., Marietta, \$5,000. William

R. Caskin, John Thomas Power, Earl E. Pryor, Anthony N. Klein.

The Salle Brothers Co., Ironton, \$50,000. Herman Salle, Isadore Salle, Fannie Salle, Meyer Saltz, Dora Salle.

The Blue Ridge Coal and Dock Co., Cleveland, \$500. Elmore L. Andrews, David A. Gaskill, Clay Dietrich, Jerome C. Fisher, J. Frank Pease.

The Edgemount Fuel and Mining Co., Columbus, \$5,000. R. M. Hunter, M. L. Bush, R. L. Spencer, Barton Griffith, Jr., S. A. Senter.

The Cadles Classy Footwear Co., Columbus, \$50,000. C. P. McClelland, Harry L. Shriver, Renetta Stern, Flora Koenig, Margaret E. Fenlon.

The Original Sample Shop Co., Cincinnati, \$1,000. Julia E. Boyle, Thomas E. Boyle, Edna M. Boyle, Peter L. Boyle, Frank W. Boyle.

The Automotive Electric Co., Cleveland, \$500. T. D. Lamb, F. M. Conley, P. M. Nuederle, S. D. Dodge, E. M. Court.

The Carnegie Drug Co., Cleveland, \$10,000. Bessie Hamilton, S. A. Thorman, A. H. Goldman, Lester E. Robinson, Wm. J. Bialosky.

The Donnelly Oil Co., Cleveland, \$10,000. B. Buechner, Francis H. Beam, Monroe A. Loeser, Ira J. Warner, L. S. Leppla.

The Sterling Petroleum Co., Columbus, \$37,500. R. H. Gittens, Ralph H. Henney, E. Quimby Smith, J. Earl Wightman, E. H. Condon.

The Bethel Oil & Gas Co., W. Mansfield, \$30,000. M. H. Bill, H. A. Williams, A. J. Parker, H. A. Reed, E. F. Bechtel.

The Medina Rubber Co., Medina, \$25,000. Herbert C. Keck, S. E. Johnson, D. R. Pelton, H. W. Witter, G. F. High.

The Rafner Bros. Co., Dayton, \$25,000. Morris Rafner, Joel Rafner, Abraham Rafner, Harry Zeifman, Sidney G. Kusworm.

The Vim Sales and Service Co., Cleveland, \$10,000. A. J. Kiddle, Sadie Kiddle, Charles Meneggia, Lester Blaushild, Milly Blaushild.

The Cincinnati Valve Co., Cincinnati, \$10,000. Frank H. Grothaus, I. B. Gilbert, G. A. Ross, Thos. F. Bickett, E. Miller.

The White Seal Service Co., Cleveland, \$20,000. Vincent Zmunt, Irene B. Gaven, Sylvia Schaefer, Oren E. Sebern, Clyde W. Smith.

PUBLIC UTILITIES COMMISSION

No. 1242—Leon A. Beehly, William E. Bliss and William H. Kilcawley, Complainants, vs. Toledo, St. Louis & Western Railroad Company, Walter L. Ross, Receiver of Toledo, St. Louis & Western Railroad Company, The New York, Chicago & St. Louis Railroad Company and the Toledo Terminal Railroad Company, Defendants.

The Supreme Court of Ohio having, by mandate, duly made and entered in its Cause No. 17227, reversed the order made and entered herein upon the seventh day of July, 1921, and remanded the original papers to this commission with instructions to determine the amount due the complainants in accordance with its opinion, and to enter an order in favor of complainants therefor in accordance with the statute;

This day said matter again came on for consideration upon the original pleadings, the exhibits, the stipulations of the parties of agreement as to the facts involved, herein, and the argument of counsel.

The commission, being fully advised in the premises and in conformity to said mandate and opinion of the supreme court of Ohio, finds:

“That, beginning with the thirty-first day of July, 1914, to and including August 31st, 1914, the France Slag Company shipped, via defendant's lines of railway from Toledo, Ohio, to Keifersville, Ohio, twenty-seven cars of crushed furnace slag, aggregating 1203.6 net tons.

That Kiefersville is a local station upon the line of The New York, Chicago & St. Louis Railroad Company, intermediate between Fostoria, Ohio, a local station upon said railway and the station of Toledo, Ohio, upon the line of The Toledo Terminal Railroad Company; and that the said defendants are connecting lines of road;

That defendant's tariff in effect and duly filed with the commission during the time of the movement of said shipments aforesaid carried a rate of fifty cents per net ton on furnace slag, moving from Toledo, Ohio, to Fostoria, Ohio, over said connecting lines of road;

That said The France Slag Company was charged and paid the defendants, except the defendant Walter L. Ross, receiver of Toledo, St. Louis & Western Railroad Company, prior to November 20th, 1914, for the transportation of said shipments aforesaid, the sum of \$784.58, which sum was collected

and received by the defendant, The New York Chicago & St. Louis Railroad Company, and by it divided among said defendants, being at the rate of sixty-five cents per net ton for each of said 1203.6 net tons of crushed furnace slag, and such rate, by reason of said concurrent rate from Toledo, O., to Fostoria, Ohio, being in violation of Section 8988 of the General Code of Ohio, and the lawful charge for the transportation of said 1203.6 net tons at the legally applicable rate of fifty cents per net ton being the sum of \$601.80, that the overcharge or difference between the sum so charged and paid for the transportation of said shipments and the lawful charge therefor, based upon said legally applicable rate, is the sum of \$182.78;

That beginning with the twenty-third day of May, 1914, to and including October 21st, 1914, said The France Slag Company shipped, via defendants' lines of railway from Toledo, Ohio, to Elm Center, Ohio, one hundred and sixty-three cars of crushed furnace slag, aggregating 7121.8 net tons;

That Elm Center is a local station upon the line of The New York, Chicago & St. Louis Railroad Company intermediate between Fostoria, Ohio, a local station upon said railway, and the station of Toledo, Ohio, upon the line of The Toledo Terminal Railroad Company; and that the roads of said defendants are connecting lines of road;

That defendants' tariff in effect and duly filed with the commission during the time of the movement of said shipments aforesaid carried a rate of fifty cents per net ton on furnace slag moving from Toledo, Ohio, to Fostoria, Ohio, over said connecting lines of road;

That said The France Slag Company was charged and paid the defendants, except the defendant Walter L. Ross, receiver of Toledo, St. Louis & Western Railroad Company, prior to November 20th, 1914, for the transportation of said shipments aforesaid, the sum of \$4,689.62, which sum was collected and received by the defendant, The New York, Chicago & St. Louis Railroad Company, and by it divided among said defendants, being at the rate of sixty-five cents per net ton for each said 7121.8 net tons of crushed furnace slag, and such rate, by reason of said concurrent rate from Toledo, Ohio, to Fostoria, Ohio, being in violation of Section 8988 of the General Code of Ohio and the lawful charge for the transportation of said 7121.8 net tons at the legally applicable rate of fifty cents per net ton being the sum of \$3,560.90, that the overcharge or difference between the sum charged and paid for the transportation of said shipments and the lawful charge therefor, based upon said legally applicable rate, is the sum of \$1,128.72;

That, beginning with the twenty-second day of October, 1914, to and including October 26th, 1914, said The France Slag Company shipped via defendants' lines of railway from Toledo, Ohio, to Elm Center, Ohio, four cars of crushed furnace slag, aggregating 176.25 net tons;

That Elm Center is a local station upon the lines of The New York, Chicago & St. Louis Railroad Company intermediate between Fostoria, Ohio, a local station upon said railway, and the station of Toledo, Ohio, upon the line of The Toledo Terminal Railroad Company, and that the roads of said defendants are connecting lines of road:

That defendants' tariff in effect during the time of the movement of said shipments aforesaid carried a rate of fifty cents per net ton on furnace slag moving from Toledo, Ohio, to Fostoria, Ohio, over said connecting lines of road;

That said The France Slag Company was charged and paid the defendants, except the defendant the Toledo, St. Louis & Western Railroad Company prior to November 20th, 1914, for the transportation of said shipments aforesaid, the sum of \$114.51, which sum was collected and received by the defendant The New York, Chicago & St. Louis Railroad Company, and by it divided among said defendants, being at the rate of sixty-five cents per net ton for each of said 176.25 net tons of crushed furnace slag, and such rate by reason of said concurrent rate from Toledo, Ohio, to Fostoria, Ohio, being in violation of Section 8988 of the General Code of Ohio, and the lawful charge for the transportation of said 176.25 net tons at the legally applicable rate of fifty cents per net ton being the sum of \$88.13, that the overcharge or difference between the sum charged and paid for the transportation of said shipments and the lawful charge therefor based upon said legally applicable rate, in the sum of \$26.38;

That, by a duly executed and delivered bill of sale, all rights, claims, demands and overcharges for the transportation of all of said shipments, have been conveyed by said The France Slag Company to the complainants herein and that said complainants are still the owners of the aforesaid claims for overcharge;

The complainants and their predecessor in title to said rights each filed a claim with the defendants for overcharge in connection with the transportation of said shipments aforesaid in the gross sum of \$1,294.07, none of which was paid within sixty days from the date of said filing, nor at any time since, and

That by reason of the aforesaid overcharges and payments the complainants have a valid and subsisting claim against the defendants, Toledo, St. Louis & Western Railroad Company. The New York, Chicago & St. Louis Railroad Company and The Toledo Terminal Railroad Company, in and there is due the complainants from said defendants, and each of them, the sum of \$1,267.69 with interest thereon from the twentieth day of November, 1914, at the rate of six per cent (6%) per annum, and a valid and subsisting claim against the defendants Walter L. Ross receiver of Toledo, St. Louis & Western Railroad Company, The New York, Chicago & St.

Louis Railroad Company and The Toledo Terminal Railroad Company, in, and there is due complainants from said defendants and each of them, the sum of \$28.38, with interest thereon from the twentieth day of November, 1914, at the rate of six per cent (6%) per annum.

The commission further finds that the complainants reside in Youngstown, county of Mahoning, State of Ohio; that the defendants, The New York, Chicago & St. Louis Railroad Company, Walter L. Ross, as receiver of Toledo, St. Louis & Western Railroad Company, The Toledo Terminal Railroad Company and Toledo, St. Louis and Western Railroad Company each has and maintains offices in the county of Lucas, State of Ohio. It is therefore,

Ordered, That the findings of the commission in this cause be certified to the clerk of the Court of Common Pleas of Lucas County, Ohio.

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No. 2644—In the Matter of the Application of The Steubenville, East Liverpool & Beaver Valley Traction Company for Consent and Authority to Enter Into a Contract and Lease of Cars and to Make, Execute and Deliver Its Promissory Notes in Connection Therewith. Prayer Granted.

(Dated August 24, 1922)

This day, (it appearing to the commission from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary), this matter came on for consideration upon the application of The Steubenville, East Liverpool & Beaver Valley Traction Company, (a corporation duly organized and existing under and by virtue of the laws of the States of Ohio and Pennsylvania), asking the consent and authority of this commission to:

Make and enter into a contract and lease, with R. G. Lloyd of Philadelphia, Pennsylvania, as lessor, whereby the applicant will, upon the payment of the initial sum of \$75,000.00, secure the use, and, upon the payment and discharge of sixty-one promissory notes, of the total principal sum of \$119,899.99, (representing, as rentals, the deferred payments, and the interest thereupon, of the consideration to be passed for said equipment), title to 75 new double-end, safety motor cars, and

Issue sixty-one (61) promissory notes of the total principal sum of \$119,899.99, in evidence of its indebtedness for and on account of the deferred payments, and the interest

thereupon, of the total consideration to be passed for said additional equipment.

The commission, being fully advised in the premises, finds from the pleadings and exhibits filed herein and its independent inquiry and investigation thereupon:

That the applicant has in contemplation the purchase of twenty-five new double-end, safety motor cars at a total cost to it of \$194,899.99, and

That the making of said contract and lease and the issuing of said promissory notes, of the total principal sum of \$119,899.99 is reasonably required and necessary for the extension and improvement of applicant's facilities, and not replacements, and for the maintenance and improvement of its service,

and is satisfied that consent and authority therefor should be granted. It is, therefore,

Ordered, That said The Steubenville, East Liverpool & Beaver Valley Traction Company be, and hereby it is authorized to:

(1) Make and enter into a contract and lease, substantially in the form of the proposed contract and lease appended to the application herein, as Exhibit "A," which Exhibit "A" hereby is made a part of this order by reference, with R. G. Lloyd, of Philadelphia, Pennsylvania, as lesser, whereby the applicant will, upon the payment of the initial sum of \$75,000.00, secure the use, and, upon the payment and discharge of sixty-one promissory notes of the total principal sum of \$119,899.99, (representing, as rentals, the deferred payments and the interest thereupon, of the consideration to be passed for said equipment) and the performance of certain other covenants and agreements, acquire title to twenty-five (25) new double-end, fully equipped, safety, motor cars, and

(2) Execute and deliver to the said lessor, sixty-one (61) promissory notes, of the respective principal sums and maturing upon the several dates set forth in the aforesaid Exhibit "A," of the said total principal sum of one hundred and nineteen thousand, eight hundred ninety-nine and ninety-nine one hundredths dollars (\$199,899.99), in evidence of applicant's indebtedness for and on account of the deferred payments of the consideration for said additional motor cars.

It is further

Ordered, That the applicant make verified report to this commission of the acquisition of said additional motor cars and the making and issuing of said promissory notes pursuant to the terms and conditions of this order.

Advanced Utility Rate Proceeding No. 78.—In the Matter of the Proposed Increased Rates and Charges of The Newcomerstown Water Company for Water Service, Filed to Become Effective February 1, 1922.

(Dated June 29, 1922)

The commission having heretofore, upon the complaint of the village of Newcomerstown, Ohio, suspended the use and operation of the rates and charges for water service in the village of Newcomerstown, Ohio, set forth in the proposed schedule, designated P. U. C. O. No. 1, published and filed by The Newcomerstown Water Company to become effective February 1st, 1922, and entered upon an investigation concerning the propriety of such rates and charges:

This day, after full hearing, due notice of the time and place of which was given to all parties in interest, said matter came on for final consideration upon the pleadings, the evidence and exhibits offered at said hearing, and the commission's independent investigation of the respondent's books and property.

The commission, being fully advised in the premises, finds:

That the reproduction and present values of the property of said respondent, used and useful for the convenience of the public in the furnishing of water service, as of February 1st, 1922, are, respectively, the sums of \$154,041.13 and \$120,-135.57;

That the probable operating revenue for furnishing said water service in the village of Newcomerstown, Ohio, based upon said proposed charges, will amount to the sum of \$19,961.00;

That the reasonable operating expenses for furnishing said service for one year would amount to the sum of \$10,-550.00, leaving a balance for depreciation, interest and dividend charges of \$9,411.00;

That a reasonable annual charge for depreciation upon respondent's property is the sum of \$1,802.00, and

That, after setting aside the amount for depreciation above allowed, there would then be the amount of \$7,609.00 for interest and dividend charges, which said amount is approximately six and one-third percentum of the present value of said property.

The commission further finds that said return of approximately six and one-third percentum is not unreasonable and, therefore, that the charges provided in said proposed schedule are not unjust, unreasonable, excessive or discriminatory.

The commission further finds, specifically, that the proposed charge of \$50.00 per year for each of the sixty-five installed public

fire hydrants is just and reasonable in view of the fact that the respondent, under its franchise, is required to maintain a pumping pressure for fire protection of 119 pounds which, otherwise, might be reduced to 40 pounds, with a consequent material reduction in pumping expenses and distribution system leakage.

The commission further finds that the rate of 10c per 1,000 gallons for consumers averaging over 20,000 gallons per day, is just and reasonable for the reason that the two consumers served under this rate require no appreciable investment in physical property and, in service bills, pay three-fourths of all the operating and maintenance expenses of the respondent. It is, therefore,

Ordered, That said The Newcomerstown Water Company be, and hereby it is authorized, effective July 1st, 1922, to establish and thereafter to maintain, impose, charge and collect for the furnishing of its water service in the village of Newcomerstown, Ohio, the rates and charges set forth in its schedule designated P. U. C. O. No. 1, published and filed with this commission upon December 30, 1921.

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No. 2620—In the Matter of the Application of The Baltimore & Ohio Railroad Company for the Issue of Certificates in The Baltimore & Ohio Equipment Trust of 1922.—Prayer Granted.

(Dated August 21, 1922)

This day, it appearing to the commission from the verified allegations in said application and the sworn exhibits and statements filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, this matter came on for consideration upon the application of The Baltimore and Ohio Railroad Company, a corporation duly organized and existing under and by virtue of the laws of Maryland and authorized to, and owning operating railroads, among other states, in the State of Ohio, asking the consent, and authority of this commission to make and enter into an agreement, to be dated August 1st, 1922, with Edward T. Stuart, et al. as vendors and the Girard Trust Company of Philadelphia, as trustee, providing for the procurement of present use and ultimate ownership, by the applicant, of certain additional equipment, motive power and rolling stock, costing approximately \$9,000,000.00, and to issue, as evidence of its indebtedness for an amount equal to seventy-five percentum of the cost of said equipment, equipment trust certificates of a principal sum not exceeding \$6,750,000.00;

Upon consideration whereof, and being fully advised in the premises and it appearing that the Interstate Commerce Commission, by order made and entered upon the sixteenth day of August, 1922, in Finance Docket No. 2491, has consented to and authorized the making of such agreement and the issuing of such equipment trust certificates, the commission finds: That the making of said equipment trust agreement and the leases therein provided, and the issuing of not exceeding \$6,750,000.00. principal sum, of equipment trust certificates is reasonably required for the acquisition of property, and the extension and improvement of applicant's facilities, and necessary for the maintenance and improvement of its service, and is satisfied that, insofar as it has the authority so to do, its consent and authority should be granted. It is, therefore,

Ordered, That, insofar as this commission has the authority so to do, said The Baltimore & Ohio Railroad Company be, and hereby it is authorized:

(1) To make and enter into with Edward T. Stuart, James Cheston, Jr., and William F. Lester, as venders, and the Girard Trust Company of Philadelphia, as Trustee, an agreement, creating "The Baltimore & Ohio Equipment Trust of 1922":

(2) To make and execute the lease, or leases, thereunder provided, whereby it will procure the present use and, upon the full discharge of the obligations undertaken in said agreement and lease, or leases, ultimate ownership of the following equipment, of the following approximate costs, viz:

2 Steel dining cars, @ \$45,000.....	\$ 90,000.00
2 Steel dining cars, @ \$43,000.....	86,000.00
2 Steel dining cars, @ \$38,000.....	76,000.00
40 Steel passenger coaches, @ \$21,410.....	856,400.00
30 Passenger train express and combination express cars, @ \$18,000.....	540,000.00
3 Steel combination baggage and postal cars, @ \$21,010	63,030.00
5 Steel postal cars, @ \$21,550.....	107,750.00
1,000 O-27a 70-ton 46-ft. drop and steel gondola cars, @ \$1,600	\$1,600,000.00
1,000 M-15 40-ton steel underframe box cars, @ \$1,700	1,700,000.00
1,000 50-ton steel hopper cars, @ \$1,500.....	1,500,000.00
35 Mikado freight locomotives, @ \$51,500.....	1,802,500.00
15 Pacific passenger locomotives, @ \$43,200..	648,000.00
	\$9,069,680.00

and

(3) To issue, by endorsing its guaranty of the payment

of the principal and interest thereof, not exceeding six million, seven hundred and fifty thousand dollars (\$6,750,000.00), principal sum, of seventy-five (75) percentum of the cost of said equipment aforesaid, of Equipment Trust Certificates, provided by said agreement, which certificates shall be dated August 1st, 1922; bear interest at the rate of five per centum per annum, mature serially, at the rate of \$450,000.00 principal amount, per year on the first day of August, 1923 to 1937, inclusive.

It is further

Ordered, That the applicant make verified report of the exercise of the authority herein granted, detailing the amount and cost of the equipment procured and the principal sum of the equipment trust certificates issued and disposed of.

ATTORNEY GENERAL

A "Serial Bond" Within the Meaning of the Griswold Act Generally, is a Bond Issued in Maturities Complying With Section 2295-12, General Code, the Tax Levies for Which Are to be Made in the Manner Provided in Section 5649-1b, General Code. An Issue of Bonds, the Maturity of Which May Accidentally Conform to the Requirements of Section 2295-12, General Code, But the Tax Levies on Account of Which are to be Made by Taxing Authorities Other Than the County Auditor, and in a Manner Other Than That Provided for in Section 5649-1b of the General Code, is Not "Serial," at Least, Generally Speaking. When Such Bonds Are Outstanding the Board of Sinking Fund Trustees of a County or Municipality are not Abolished.—So Long as There are Both "Sinking Fund" Bonds and "Serial" Bonds to be Dealt With, the Existing Sinking Fund Authorities Are to Continue; But When All the Bonds of the First Class Are Retired, Then the "Bond Payment Fund" is to Come Into Existence and the Treasurer is to Succeed to the Powers and Duties of the Sinking Fund Authorities and Discharge Them in Accordance With the Statutes Relative to Such Powers and Duties. The County Sinking Fund Commission Will Not be Abolished Until All Bonds of the County Outstanding on the First Day of January, 1922, Are Retired.—When the Time Comes for the Transfer of Functions of the Sinking Fund Trustees of a County to the County Treasurer, it Will be the Duty of the County Commissioners Under Section 2976-27, General Code, to Offer Bonds Issued by Them First to the County Treasurer as Successor to the Powers and Duties of the Sinking Fund Trustees.

No. 3302.—(Opinion Dated July 5, 1922.)

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

Gentlemen: You have requested the advice of this department as follows:

"Section 2295-14 as enacted in 109 O. L. 347, provides that the sinking fund trustees of any county, or municipality or board of sinking fund commissioners of any school district shall continue to exercise the powers provided in sections 2976-18 to 2976-27, inclusive, 4511 to 4522 inclusive, 3932 and 7613 to 7619 inclusive of the General Code and all other provisions of law relating to its powers, until all outstanding

bonds of such county, municipality or school district to be retired by means of a sinking fund shall have been paid; and thereupon it shall be deemed to be abolished and its functions and powers relating to the purchase and sale of securities, etc., shall be deemed to be transferred to the treasurer of the county, municipality or school district.

Question 1. In case a county, municipality or school district has at this time only serial bonds outstanding, which are not to be retired by means of a sinking fund under the general interpretation of the meaning of that term, that is the creation of a fund to retire bonds at their maturity, which fund in the meantime may be invested until such time as the maturity of the bonds requires its use, is the board of sinking fund trustees of a county or a municipality or the board of sinking fund commissioners of a school district, under such circumstances abolished?

Question 2. If your holding is that when there are no longer any bonds outstanding except serial bonds, the sinking fund commission is abolished by law, has the county treasurer, who seems to be the successor of the sinking fund commission, power to invest funds which are standing to the credit of the bond payment fund in the same way that the sinking fund commission was authorized to invest funds to the credit of the sinking fund?

Question 3. In the event that the sinking fund commission is abolished, when the county commissioners issue bonds will they be required, first, to offer them at par and accrued interest to the treasurer of the county under the provisions of section 2976-27 of the General Code?"

Section 2295-14 of the General Code, referred to in your letter, provides as follows:

"The board of sinking fund trustees of any county or municipality or the board of sinking fund commissioners of any school district shall continue to exercise the powers provided in sections 2976-18 to 2976-27 inclusive, 4511 to 4522 inclusive, 3932 and 7613 to 7619 inclusive of the General Code and all other provisions of law relating to its powers, until all outstanding bonds of such county, municipality or school district to be retired by means of a sinking fund shall have been paid; and thereupon it shall be deemed to be abolished and its functions and powers relating to the purchase and sale of securities, receipt, deposit and investment of taxes, assessments and other funds raised for the payment of bonds and funded debts, the application of such funds to the payment of bonds and other indebtedness and all its other powers and functions as set forth in said provisions of law as amended in this act shall be deemed to be transferred to the treasurer of the county, municipality or school district, and all moneys, securities and other assets then in

the custody and possession of such board shall be transferred and delivered to such treasurer. Thereafter all said moneys, securities and assets and all moneys received by the county, municipality or school district for the payment of the interest and principal of its bonds or other funded debts and all inheritance taxes and all other taxes and revenues which were theretofore payable, by virtue of provisions of law, into its sinking fund shall be paid to its treasurer and placed and held by him in a separate fund to be known as 'Bond Payment Fund' and subject to the provisions of law relating to transfer to other funds, said fund shall be applied by him to the purposes for which the sinking fund had theretofore been applicable."

In connection with this temporary provision attention must be called to other provisions of the so-called Griswold Act of which it is a part. Thus the act amends certain sections of the General Code having to do with sinking funds and their administration. Prior to the passage of the Griswold Act there was statutory provision for a county sinking fund (Sections 2976-18, 2976-27, inclusive), for a school district sinking fund (Sections 7613 to 7619 inclusive), and a municipal sinking fund (Sections 4511 to 4522 inclusive). The officers charged with the administration of these several sinking funds were, generally speaking, to provide for a levy for interest and sinking fund purposes, to receive the proceeds thereof, to invest them in securities or hold them in reserve, and to take up the matured funded obligations of the several subdivisions as they became due, applying for this purpose the sum held in reserve and converting the securities into cash. This was particularly true of the municipal sinking fund, the provisions with respect to which were definite and detailed. It was also the case with respect to the county sinking fund; but the situation with respect to the school district sinking fund was slightly different, in that the tax levy was to be made not by the sinking fund commissioners of the school district, but by the board of education itself; but all the other functions above mentioned were reposed in the commissioners of the sinking fund, the establishment of which body was in theory at least a mandatory duty of the board of education. See Section 7614 of the General Code, prior to its amendment, and 109 O. L., 345.

At that time, and since January 1, 1913, the Constitution, Article XII, Section II, provided that no bonded indebtedness could be incurred unless legislative provision was made for levy and collecting annually by taxation an amount sufficient to pay the

interest and to provide a sinking fund for the retirement of the indebtedness at maturity. Notwithstanding this language in the constitution, it was held by this department that it was lawful to issue serial bonds in the sense that maturities might be unequal, i. e., arranged in convenient series. This holding was generally acquiesced in. It was further held, however, that the constitution required a levy of an aliquot part of the whole indebtedness each year during the life of the entire indebtedness, regardless of the maturities of the respective series. To illustrate this feature of the former holding, it was said that while it was lawful for bonds to be issued maturing in series beginning, say, five years after the date of issuance and running in substantially equal maturities, through the entire period of the indebtedness, yet the constitution as applied to such an issue would require a sinking fund levy to be made in each of the first four years of the period of the indebtedness though no bonds should mature during those years. In other words, the constitution and the statute as they then stood united in requiring sinking fund levies to be made regardless of the fact that the bonds matured in series; or stated conversely, it was unlawful to omit any levy on account of the principal of a debt simply because during the years for which taxes were being levied no part of that principal was to mature; though on the other hand it was not unlawful to provide for serial maturities. The principle, shortly stated, was that the levy of taxes should be made on a sinking fund basis regardless of maturities.

This was so, as previously stated, both because the statutes required it, and because the constitution required it. These statutes and constitutional provisions did not affect the maturities of the bonds but only the machinery of levying taxes for the payment of principal and interest.

In considering the law as it was prior to the enactment of the Griswold Act one case remains to be dealt with, namely, that wherein bonds might have been issued in series of substantially equal maturities falling due in each of the years for which it would be possible to levy taxes; in other words, a case in which the series were arranged as to maturities substantially as they are now required to be arranged by the Griswold Act, Section 2295-12 of the General Code. In such a case the question arises as to whether bonds so issued are any the less sinking fund bonds, or to use the language of Section 2295-14, "bonds * * * to be retired by means of a sinking fund" because of such circumstances. In such a case it might well be that, as the bureau puts it in its

letter, the bonds would not be "retired by means of a sinking fund under the general interpretation of the meaning of that term, that is, the creation of a fund to retire bonds at their maturity, which fund in the meantime may be invested until such time as the maturity of the bonds require its use." This is the only way in which such a statement would be true, but that it would be true in such a case cannot be gainsaid; for the money raised by taxation for principal and interest in any year would not need to be greater in amount than enough to pay the principal and interest maturing in that year; and especially when the maturity dates were close to the tax settlement period there would be no practical advantage in investment of the proceeds of the tax levies for the short period intervening settlement date and date of payment.

But while bonds so issued prior to the enactment of the Griswold Act were not "sinking fund bonds" in this generally accepted sense, it does not follow that the proceeds of the tax levies made for their retirement did not constitute a "sinking fund" in the sense in which that term was used in the constitution and statutes at the time. The contrary is the case. If the bonds were issued subsequently to January 1, 1913, the constitution itself required sinking fund levies to be made; while the statute designated the bond retirement levy as a "sinking fund" in all cases, as has been seen. So in the statutory and constitutional sense the levies made for the retirement of bonds, as has been described, were sinking fund levies even though it would not be practicable or necessary in such a case for all the machinery provided by law for the administration of sinking fund generally to be applied for their retirement.

But it must be conceded that we are dealing not with the laws that existed prior to the enactment of the Griswold Act, but with the interpretation of that act itself, and particularly with the construction of that provision of Section 2295-14 which mentions "bonds * * * to be retired by means of a sinking fund." While therefore the examination of the pre-existing law is helpful, and in the absence of other evidence of legislative intent embodied in the Griswold Act itself might afford the only clue to that intent, yet the status of the pre-existing law is after all secondary evidence of the legislative intent in the enactment of the Griswold Act when compared with the provisions of that act itself. Reference has previously been made herein to the fact that the Griswold Act amends certain of the sinking fund sections. It does not repeal

them outright. Thus, Section 4506 of the General Code, dealing with municipal sinking funds, is so amended in the Griswold Act as to read as follows:

"Municipal corporations having outstanding bonds or funded debts shall, through their councils and in addition to all other taxes authorized by law, levy and collect annually a tax upon all the real and personal property in the corporation sufficient to pay the interest and provide a sinking fund for the extinguishment of all bonds and funded debts heretofore issued and incurred and the taxes so raised shall be used for no other purpose whatever."

See also Section 4513, part of the same group of sections, which was amended to read as follows:

"On or before the first Monday in May of each year, the trustees of the sinking fund shall certify to council the amount of tax necessary to provide a sinking fund for the future payment of bonds heretofore issued by the corporation, for the payment of interest on such bonded indebtedness, and the rents due on perpetual leaseholds of the corporation not payable from a special fund, and the expenses incident to the management of the sinking fund. The council shall place the several amounts so certified in the tax ordinance before and in preference to any other item and for the full amount certified. Such taxes shall be in addition to all other taxes authorized by law."

These sections dealing with municipal sinking funds and sinking fund commissions, are in a sense temporary, as they relate to the levy of taxes for the retirement of bonds "heretofore issued," so that when all bonds "heretofore issued" have been retired these sections will perhaps cease to operate. Let it be noted, however, that they make no discrimination as between bonds issued in series and bonds issued with equal maturities. That is to say, the Griswold Act itself provides by these amendments, and quite apart from Section 2295-14, which is now under examination, that the municipal sinking fund trustees shall continue to raise and administer tax levies for the payment of all bonds "heretofore issued" and the interest thereon. Moreover, they state that such tax levies shall be to "provide a sinking fund" for the retirement of such bonds. It is not to provide a sinking fund for the retirement of non-serial bonds heretofore issued that the municipal sinking fund trustees are authorized and required to act, but to provide a sinking fund for the retirement of all bonds heretofore issued. It is thus clear that the General Assembly in passing the Griswold Act, and in particular, by amending Sections 4506 and 4513 of the

General Code, conceived of all bonds issued prior to the time when the Griswold Act should take effect as "sinking fund bonds" in some sense at least.

So also in amending the county law, like language was used. Section 2976-26 as amended 109 O. L., 345, provides as follows:

"On or before the first Monday in May of each year, the trustees of the sinking fund shall certify to the board of county commissioners the rate of tax necessary to provide a sinking fund for the payment at maturity of bonds heretofore issued by the county and for the payment of interest on said bonded indebtedness. The amount so certified shall be set forth in the annual budget of the county commissioners without diminution."

Note, again, that the provision is not that the sinking fund shall be thus raised for the payment of equal maturity bonds or non-serial bonds heretofore issued, but that it is that the trustees of the sinking fund shall certify a rate sufficient to provide a sinking fund for all bonds heretofore issued. In other words, so far as municipal and county sinking funds and the functions of municipal and county sinking fund trustees are concerned, all bonds issued prior to the effective date of the Griswold Act are to be treated as sinking fund bonds. In other words, ignoring for the time being Section 2295-14 of the General Code and having regard only to the sections last above examined, exclusive authority is vested in the municipal and county sinking fund trustees respectively, to levy taxes for and provide for the payment of all bonds "heretofore issued."

The Griswold Act is perhaps less clear in its treatment by way of amendment of Section 7614 of the General Code dealing with school district sinking funds. Instead of providing, as in the case of the municipal and county sinking fund authorities, that the commissioners of the sinking fund of the school district shall raise and administer a sinking fund for the payment at maturity of bonds "heretofore issued," this section direct the board of education to provide a tax levy "for the payment of its serial bonds as they mature, and a sinking fund for the payment of its other bonded indebtedness, which funds shall be managed and controlled by a board of trustees." However, this change in expression is partly accounted for by the different form of the pre-existing law with respect to school districts as compared with that relating to municipal corporations and counties respectively. It is worthy of note that Sections 7613, 7615 and the other sections in the school

district sinking fund law were left unrepealed. Thus, Section 7613, still in effect, orders the board of education of a district having a bonded indebtedness, to provide a sinking fund for the payment of all such bonded indebtedness. In the sense then in which the phrase "sinking fund" is used in Section 7613 all tax levies for bond retirement purposes are sinking fund levies though the bonds are serial bonds in the limited sense above discussed. Without going into detail in the consideration of the school district law, and dealing with the question immediately at hand, it is the opinion of this department that Section 7614 of the General Code as amended, does not require any different conclusion to be reached with respect to school district bond retirement levies and their administration than that which has been reached in the other two cases; so that for all the reasons that have heretofore been discussed, all bonds issued by a school district prior to the effective date of the Griswold Act must be regarded as "other bonded indebtedness" to be extinguished by means of a "sinking fund" within the meaning of Section 7614 as amended, and not as serial bonds within the meaning of the section regardless of their maturities.

Another feature of the Griswold Act which ought to be taken into consideration before arriving at a final conclusion with respect to the meaning of Section 2295-14 is that embodied in Sections 2295-12 and 5649-1b of the General Code as enacted therein. The first of these sections need not be quoted. It now requires all bonds "hereafter issued" to be "serial bonds maturing in substantially equal annual installments beginning not earlier than the date fixed by law for the final tax settlement between the county treasurer and the political subdivision or taxing district next following the inclusion of a tax for such issue in the annual budget by the county auditor." Section 5649-1b begins by requiring the measure under which bonds are issued or authorized to "contain a levy of taxes sufficient to pay the interest and principal of the bonds as they mature." This resolution is to be certified to the county auditor. It is then provided that

"the county auditor, without further action by the tax-levying authority of the subdivision, shall include said annual levies in the appropriate annual budgets submitted by him to the budget commissioners as provided in section 5649-3c of the General Code, including the county budgets."

After a proviso for the substitution of other revenues where available, this section concludes with the following words:

"The sum thus included in any budget submitted to the budget commissioners shall not be reduced by said commissioners and shall be given by said auditor and commissioners and other taxing authorities all the precedence and priorities provided by law for interest and sinking fund levies.

The outstanding feature of this new provision is the vesting in the county auditor of the authority and duty to make the interest and retirement levies for the kind of bonds with which it deals. Prior to the enactment of the Griswold Act, such levies were made from year to year by the ordinary tax levying authorities, i. e., the council or sinking fund trustees of a municipal corporation, the commissioners or sinking fund trustees of a county and the board of education of a school district. These levies were not automatic, so that if the proper levying authorities should fail to act in a given year the levies would not be made.

In the same connection, Section 5649-1 of the General Code, also amended in the Griswold Act, may be taken into consideration and sheds a great deal of light on the problem under discussion. It provides as follows:

"In any taxing district, the taxing authority shall, within the limitations and in the manner prescribed by law, levy a tax sufficient to provide for interest and maturity payment purposes for all serial bonds issued by any political subdivision, and for interest and for sinking fund purposes of all bonds heretofore issued by such political subdivision, which tax shall be placed before and in preference to all other items, and for the full amount thereof."

In fact, this section contains the key to the question, for it distinctly contrasts the following:

- (1) All serial bonds issued by any political subdivision.
- (2) Interest and sinking fund purposes of all bonds heretofore issued by any such political subdivisions.

In other words, this section assumes that all bonds heretofore issued are sinking fund bonds, and by inference declares that the only "serial bonds" are bonds which have not been "heretofore issued." Without prolonging the discussion, it seems to this department that the foregoing examination and analysis of sections found in the Griswold Act itself has made it apparent that a "serial bond" within the meaning of the sections so far examined, is a bond issued in conformity with the requirement of Section 2295-12, and

to which Section 5649-1b of the General Code applies. Now, Section 5649-1b does not apply to bonds "heretofore issued." The taxes necessary to provide for the payment of bonds "heretofore issued" are not to be levied by the county auditor. It is only bonds, the measure authorizing the issuance of which has been certified to him as therein required, that are subject to his authority with respect to the levy of taxes; and no bonds "heretofore issued" are in this class.

For the foregoing reasons then it is the opinion of this department that a "serial bond" within the meaning of the Griswold Act generally, is a bond issued in maturities complying with Section 2295-12 of the General Code, the tax levies for which are to be made in the manner provided in Section 5649-1b of the General Code. An issue of bonds, the maturities of which may accidentally conform to the requirements of Section 2295-12, but the tax levies on account of which are to be made by taxing authorities other than the county auditor, and in a manner other than that provided for in Section 5649-1b of the General Code, is not "serial," at least generally speaking.

These conclusions point the way to the correct interpretation of Section 2295-14. Within the meaning of that section, a bond "to be retired by means of a sinking fund" is a bond, the tax levies for which are not to be made by the county auditor under Section 5649-1b of the General Code.

Accordingly, the answer to the bureau's first question is in the negative.

This conclusion may make an answer to your second and third questions unnecessary. Assuming, however, that there may be some taxing district in which all bonds outstanding on the first of January, 192, have been retired, so that the abolition of the sinking fund trustees or commissioners, and the consequent transfer of their powers and functions to the treasurer of the subdivision which in that event would follow under Section 2295-14 has taken place, they will be briefly considered.

Section 2295-14 provides that upon the abolition of the sinking fund authorities theretofore existing.

"its functions and powers relating to the purchase and sale of securities, receipt, deposit and investment of taxes, assessments and other funds raised for the payment of bonds and funded debts, the application of such funds to the payment of bonds and other indebtedness and all its other powers (sections 2976-18 to 2976-27 inclusive, 4511 to 4522 inclusive, 3932 and 7613 to 7619 inclusive of the General Code) and all

other provisions of law relating to its powers * * * as amended in this act shall be deemed to be transferred to the treasurer of the county, municipality or school district, and all moneys, securities and other assets then in the custody and possession of such board shall be transferred and delivered to such treasurer. Thereafter all said moneys, securities and assets and all moneys received by the county, municipality or school district for the payment of the interest and principal of its bonds or other funded debts and all inheritance taxes and all other taxes and revenues which were theretofore payable, by virtue of provisions of law, into its sinking fund shall be paid to its treasurer and placed and held by him in a separate fund to be known as 'Bond Payment Fund' and subject to the provisions of law relating to transfer to other funds, said fund shall be applied by him to the purposes for which the sinking fund had theretofore been applicable."

This language is very explicit, and on the basis thereof it seems clear that in a county (to which your second question seems to relate) the county treasurer will, after the abolition of the sinking fund trustees, acquire the power to invest the funds standing to the credit of the bond payment fund. It is equally clear, however, that this succession of power does not take place until the abolition of the sinking fund trustees. There is nothing in the Griswold Act vesting in the treasurer of a subdivision the power or duty to provide for the payment of "serial bonds" until all the "sinking fund" bonds as defined in this opinion are retired. With respect to counties, Sections 2976-19, and other similar sections remain in full force and effect. The section referred to requires the trustees of the county sinking fund to provide for the payment of all bonds issued by the county, and all interest maturing thereon, and provides that "all taxes, assessments and other moneys collected for such purposes or held in the county treasury to the credit of the sinking fund, shall be subject to investment and disbursement by them in the manner provided by law." In other words, though the tax levies are to be made as provided in Section 5649-1b in the case of bonds which are to be designated as "serial bonds" within the principles laid down in this opinion, yet the levies when collected are to be paid over to and administered by the sinking fund trustees as long as they remain in existence. So also with respect to the municipal and school sinking fund authorities. This is made apparent on the face of the Griswold Act itself,

for Section 4517 of the General Code is so amended in the Griswold Act as to read as follows:

"The trustees of the sinking fund shall have charge of and provide for the payment of all bonds issued by the corporation and the interest maturing thereon. They shall receive from the auditor of the city or clerk of the village all taxes, assessments and moneys collected for such purposes and invest and disburse them in the manner provided by law. For the satisfaction of any obligation under their supervision, the trustees of the sinking fund may sell or use any of the securities or moneys in their possession."

Observe that the trustees of the sinking fund are under this section to have charge of and provide for the payment of all bonds, and are to receive all taxes, etc., and invest them. Section 7614, applying to school districts, has already been quoted herein, and with the remaining unamended sections of the law relating to school district sinking funds, makes it clear that there is to be no separation of the function of administration of the proceeds of tax levies for the retirement of "sinking fund" bonds and "serial bonds" at any time. The entire function is to remain vested in the existing sinking fund authorities until all those bonds which have been herein defined to be "sinking fund" bonds have been retired, at which time it is to be transferred intact to the treasurer of the subdivision.

Putting it in another way, so long as there are both "sinking fund" bonds and "serial bonds" to be dealt with, the existing sinking fund authorities are to continue; but when all the bonds of the first class are retired, then the "bond payment fund" is to come into existence and the treasurer is to succeed to the powers and duties of the sinking fund authorities and discharge them in accordance with the statutes relative to such powers and duties.

The answer to the bureau's third question must be likewise qualified. That is to say, the county sinking fund commission will not be abolished until all bonds of the county outstanding on the first day of January, 1922, are retired. When that happens, however, the bureau's third question will arise, and inasmuch as it might conceivably happen at any time (though the early occurrence of such an event is at least highly improbable), the question will be answered.

When the sinking fund commission is abolished, Section 2295-14 declares that the treasurer shall succeed to all functions and powers relating to the purchase and sale of securities, and

all other powers and functions of the sinking fund commission as "set forth in said provisions of law as amended in this act." There is a slight ambiguity here, for while Section 2976-27, which is the particular section about which the bureau inquires is referred to in Section 2295-14, it is not amended in this act. This difficulty is, however, more apparent than real. It is believed that the phrase "as amended in this act" should be interpreted as a reference to the groups of sections mentioned in the first sentence of Section 2295-14, rather than to the particular sections within those groups that are actually amended and re-enacted in the Griswold Act. In this sense the General Assembly was referring to Sections 2976-18 to 2976-27 inclusive, "as amended in this act" by the express amendment of one of these sections. That is to say, in this sense, the amendment and re-enactment of Section 2976-26 was an amendment of the whole act relating to the powers and duties of the county sinking fund trustees. In fact, it is believed that the treasurer succeeds to all functions, i. e., steps fully into the place of the supplanted sinking fund authorities for the purpose of all sections dealing with such sinking fund authorities by virtue of the language "and all other provisions of law relating to its powers" found in the first clause of Section 2295-14.

It follows, therefore, that when the time comes for the transfer of functions of the sinking fund trustees of a county to the county treasurer, it will be the duty of the county commissioners under Section 2976-27 or the General Code to offer bonds issued by them first to the county treasurer as successor to the powers and duties of the sinking fund trustees. But as has already been stated in dealing with the bureau's second question, there is neither any requirement for the offer of such bonds to the county treasurer nor any authority on the part of the county treasurer to purchase such bonds or any other bonds until all bonds outstanding on the first day of January, 1922, have been retired.

SECRETARY OF STATE

NEW INCORPORATIONS

The Broadway Indianapolis Theatre Co., Cleveland, \$10,000. Lafrence M. Rich, Sylvester Marz, Ethel Rosin, Rose Birnbaum, Robert Kaplan.

The Glick-Freeman Co., Cleveland, \$10,000. Emil Glick, Adolph Raduziner, Sylvia Glick, Frederick Frankel, Henry Frankel.

The Uhrig Coal Co., Nelsonville, \$15,000. D. H. Armstrong, A. H. Schory, R. W. Maupin, O. P. Amann, E. R. Davis.

The Speaks-Drais Coal Co., Columbus, \$10,000. Edna L. Speaks, James Loren, Jr., Helene C. Drais, Charles W. Drais, Stanford S. Speaks.

The Jewish Guardian Publishing Co., Cleveland, \$30,000. Abner H. Goldman, William H. Loveman, Sidney A. Thornman, Bessie Hamilton.

The First Savings Bank & Trust Co., Ravenna, \$125,000. H. R. Loomis, F. Leslie Strahl, R. B. Carnahan, E. O. Greenamyre, H. Warner, Riddle.

The Lexington Oil and Gas Co., Alliance, \$75,000. C. R. Hopkins, B. E. Vale, Robert Graham, Mack Hopkins, Wm. J. Marshall.

The Fisher Dairy Co., Wapakoneta, \$12,000. Chas. W. Fisher, Harold L. Fisher, Anna C. Fisher, L. Dewitte Fisher, Emma K. Fisher.

The Marietta Packet Co., Marietta, \$10,000. Walter B. Webster, Elmer Beaver, Morris Huffman, Asa Timmons, P. H. Patterson.

The Third Investment Co., Cincinnati, \$500,000. Thomas L. Sidle, Benj. F. Fiery, M. G. O'Brien, B. W. Jacobi, M. DeVaughn.

The Limestone Street Realty Co., Springfield, \$100,000. Harry S. Kissell, Paul L. Shafer, Brown Burleigh, A. C. Link, Lewis Link, Constantine Link.

The Consolidated Collieries Co., Toledo, \$500. W. H. Brackney, T. O. Marlar, A. T. Goorley, A. C. Ruibley, H. G. Wall.

The Courtland Oil and Gas Co., Wooster, \$1,000. Floyd Specht, F. M. Vanover, G. M. Lemmon, W. E. Hawk, G. H. Conn.

The Eddy Seed Separator Co., Cleveland, \$500. C. A. Alexander,

Trafton M. Dye, John H. Schultz, E. S. Lindemann, R. L. Haverick.

The Anchor Building & Loan Association, Rocky River, \$1,000,000. Gustav A. Cumler, J. G. Yanda, A. S. Orr, F. F. Musrush, Z. Taylor.

The Replacement Parts Mfg. Co., Cleveland, \$25,000. Harry T. Barlow, Nellie Bernet, John F. Wendt, George E. Bradbury, Frank H. Wendt.

The Universal Co-operative Printing Co., Lorain, \$10,000. H. R. Taggart, M. M. Wilcox, Florence E. Stetson, Grace P. Taggart, Kathleen Vaughn.

The Kroeck Motor Car Co., Youngstown, \$50,000. Louis Kroeck, Charles Kroeck, Agust A. Kroeck, Andrew Kroeck, R. H. Kallmerten.

The New Boston Style Shop Co., New Boston, \$10,000. Sherrard M. Johnson, Louis Roth, Ruth Roth, Josephine Chase, Hazel Wiseman.

The Lotos Products Co., Cleveland, \$20,000. Harry Sheinkman, S. J. Yost, Michael Sheinkman, Mollis Friedman, Morris Friedman.

The Harrison Live Stock Co., Cadiz, \$3 000. H. H. Whittaker, F. S. Edgar, A. G. Henderson, J. H. Haverfield, W. B. Croskey.

The Universal Sign Service Co., Massillon, \$25,000. W. E. N. Hempferly, C. F. Beiner, P. A. Kuhn, W. E. Bretzel, R. M. Roseman.

The Hiddleston Co., Akron, \$10,000. Ella M. Hiddleston, Bertha B. Austin, Henry A. Lins, Charlotte Dutt, Nina M. Stamford.

The Metropolis Realty Co., Cleveland, \$50,000. J. B. McCrea, H. P. Ranney, W. H. Rose, G. W. Haberbosch, E. L. Schneider.

The Columbus-Water Realty Co., Cleveland, \$100,000. M. Moskowitz, B. J. LaVatter, B. D. Glick, H. J. Tabor, E. M. Ackermann.

The Pearlview Finance Co., Cleveland, \$500. W. N. Cook, E. Oiler, H. F. Chester, H. J. Luke, C. H. Sisson.

The Ayres Electrical Co., Piqua, \$10,000. H. Cooper Ayres, Maud Ayres, A. Acton Hall, Margaret J. Ayres, Harry McDowell.

The Zane Shoe Co., Zanesville, \$50,000. G. H. Geist, L. W. Knoedler, J. T. Miller, H. C. Pugh, E. F. O'Neal.

The Electric Service and Battery Co., Springfield, \$15,000. Earl W. Melrose, Carl J. Lacy, Gail P. Kitchen, Wm. A. Bilikam, Jr., John L. Zimmerman, Jr.

The Greystone Amusement Co., Dayton, \$50,000. Walter H. Delscamp, Harry C. Delscamp, William H. Delscamp, Walter J. Norris, Clarence A. Doench.

The Eureka Radio Co., Cincinnati, \$10,000. Geo. E. Hentz, Otto H. Hentz, Elmer G. Hentz, Michael G. Hentz, Bernard H. Jansing.

The H. C. Stratton Realty Co., Lakewood, \$500. W. H. Stratton, Nita Gilson Stratton, H. C. Stratton, Mildred Fox Stratton, Donald G. Stratton.

The Mansfield Chevrolet Sales Co., Mansfield, \$25,000. T. J. Chamberlain, Herman W. Wentz, R. E. Hutchison, G. M. Chamberlain, R. F. Swaney.

The Bon Ton Restaurant Co., Cleveland, \$10,000. Ira J. Warner, Frank J. Mooney, L. Dunmar, O. E. Shaw, H. Stewig.

The Morton Last Co., Cincinnati, \$100,000. Chas. P. Morton, Carl T. Foley, Horace A. Reeve, George W. Kennealy, Jr., Howard N. Ragland.

The Morgan & Hathaway Motor Co., Cincinnati, \$50,000. William Morgan, Wm. E. Karnes, E. M. Hathaway, Evans Burbank, Harry B. Miller.

The Independent Construction Co., Lorain, \$25,000. H. F. Fralley, A. P. Lagron, Luella Roth, H. M. Braun, G. W. Gertz.

The Cleveland Patent Products & Mfg. Co., Cleveland, \$10,000. A. L. Kreisburg, Jos. Losky, Ike Windsor, Al Himmelstein, Victor Berger.

The Chero-Cola Bottling Co., Cleveland, \$500. Edward Younger, E. C. Wolfe, L. M. Sewell, E. C. Wolfe, A. J. Pejsa, H. B. Walz.

The Cleveland Flue Cleaner Mfg. Co., Cleveland, \$10,000. Anthony Poss, Geo. F. Sommer, F. Y. Roberts, Geo. W. Osborn, Edna H. Osborn.

The Assurance Loan & Savings Co., Akron, \$500,000. Fred M. Denison, E. V. Maguire, H. H. Montis, C. W. Barnes, E. Percy Cresswell.

The Maniscalco New Power System Co., Warren, \$500. David E. Jones, Maud E. Gillmer, R. H. Patchin, Pauline Jordan, Jesssie G. Unger.

The Salida Water Works Co., Mentor, \$10,000. Edward J. Dickey, Thomas M. Moore, R. A. Edmonds, George H. Hagenburger, Edward Vandendale, Raymond L. Bacher.

The Garage Service Co., Cleveland, \$25,000. J. J. Anthony, W. H. K. Heron, Edward V. Dake, C. C. Young, A. M. Loveland.

The Dayton Earl Motor Co., Dayton, \$20,000. Earl R. Sandoe, Herman S. Sandoe, Meredith M. Watson, A. W. Sandoe, M. B. Sandoe.

The Acme Retinning Co., Cleveland, \$10,000. G. S. Hafley, J. A. Brune, H. A. Blachman, H. T. Hoffman, G. R. Sizer.

The Claire Manufacturing Co., Springfield, \$10,000. Guy K. Claire, Robert D. Botley, E. A. Botley, M. J. Claire, Arthur J. Todd.

The Portsmouth Provision Co., Portsmouth, \$25,000. Allen J. Slatery, Hazel Wiseman, Sherrard M. Johnson, Josephine Chase, Edgar G. Millar.

The Paulding Wire & Iron Works Co., Paulding, \$5,000. John A. Mohr, E. J. K. Schmidt, H. G. Barnes, Edw. J. Schmidt, Carl A. Boyce, L. C. Schmidt, H. S. Huffman.

The Jiffy Paint & Varnish Co., Cleveland, \$10,000. Edward Kohl, J. W. Jones, M. A. Jones, G. A. Kohl, A. Kohl.

The Ohio Kennedy Co., Springfield, \$10,000. George Cugley, Thos. D. Hodge, John M. Cole, Aaron J. Halloran, H. E. Cook.

The Reael Service Co., Cleveland, \$10,000. Ed. F. Bang, B. H. Deutsch, Eli Friedman, Nathan E. Cook, H. Boim.

The 3328 Euclid Co., Cleveland, \$25,000. Frank G. Mooney, Ira J. Warner, H. Stewig, O. E. Shaw, L. Dunmar.

The Franklin Storage Co., Columbus, \$5,000. L. Loy, J. E. Zangmaster, F. C. Terry, C. L. Knapp, Edwin F. Hoover.

The Daily Oil Co., New Lexington, \$25,000. R. G. Daily, Crawford H. Daily, C. L. Bullock, B. G. Davis, T. M. Potter.

The Sterling-Brand Clothing Co., Cleveland, \$25,000. Louis Kestenbaum, S. Lieberman, Lena Kestenbaum, Harry Hollander, Isidor Lefkowitz.

The Dayton Hardware Specialty Co., Dayton, \$10,000. Walter E. Phelps, R. G. Corwin, Clifford R. Curtner, Edward A. Hoehn, Abraham K. Meck.

The Wilson Gardens Co., Painesville, \$100,000. Osborne Anderson, Lee A. Humphrey, T. H. Bottomly, R. M. Anderson, J. E. Weyer.

PUBLIC UTILITIES COMMISSION

No. 2545—Edward Heinle, Edward Likins, and I. R. Monnette, Partners Doing Business as a Partnership, Under the Firm Name and Style of Heinle, Likins and Monnette, Complainants, vs. The Marion County Telephone Company, a Corporation, and The Caledonia Telephone Company, a Corporation, Defendants.

(Dated August 24, 1922.)

This matter was submitted upon the pleadings, the evidence and exhibits, and argument of counsel:

Upon consideration whereof, and being fully advised in the premises, the commission finds:

That the complainants, as a partnership, are engaged in operating an elevator and conducting associated business activities at Tobias, Marion County, Ohio;

That, both The Marion County Telephone Company and The Caledonia Telephone Company, the defendants herein, have in the past furnished local exchange service to subscribers in the premises now occupied by the complainants in the conduct of such elevator business at Tobias, Ohio;

That said The Caledonia Telephone Company, upon proper application therefor, has installed and now maintains and operates a subscriber's station in said place of business of the complainants at Tobias, Ohio;

That said The Marion County Telephone Company, notwithstanding the making of application therefor and the performance of the other necessary preliminary actions required of prospective subscribers by said complainants, has failed and neglected and now neglects and refuses to install a subscriber's station and furnish local exchange service in said place of business of the complainants at Tobias, Ohio;

That said failure, neglect and refusal of said The Marion County Telephone Company to install and operate a subscriber's station and furnish local exchange service in complainant's said place of business at Tobias, Ohio, is unjust, unreasonable and unlawful, and renders the said defendant's service insufficient and inefficient, and

That the proposal, by said The Caledonia Telephone Company, that it be authorized to discontinue its local exchange service to the complainants if and as such service shall be instituted by its co-defendant, and of said The Marion County Telephone Company that it be directed to inaugurate such service for complainants upon conditions that the service furnished by its co-defendant be discontinued, are unjust, unreasonable and unlawful.

It is, therefore,

Ordered, That said The Marion County Telephone Company be, and hereby it is notified, directed and required, on or before the first day of September, 1922, to install and thereafter maintain and operate a local exchange subscriber's station in the premises occupied by Edward Heinle, Edward Likins and I. R. Monnette, partners doing business as a partnership under the firm name and style of Heinle, Likins and Monnette, and used in the carrying on of the business of a grain elevator, etc., at Tobias, Marion county, Ohio. It is further

Ordered, That the application of The Caledonia Telephone Company for consent and authority to discontinue the maintenance and operation of its subscriber's station in said premises, upon the inauguration of local exchange service by its co-defendant, The Marion County Telephone Company, be, and hereby the same is denied.

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No. 2599—The Mercer County Mutual Telephone Company, Applicant, vs. The Celina and Mercer County Telephone Company, Defendant.

(Dated August 23, 1922.)

This matter was submitted upon the pleadings, the evidence and exhibits, and the argument of council:

Upon consideration whereof, and being fully advised in the premises, and it appearing that respondent, The Celina and Mercer County Telephone Company, is now furnishing adequate service to its subscribers and to the public in the village of Coldwater, Ohio, and that the said respondent has offered to retain the physical connection between its plant and system and the plant and system of the applicant for the interchange of service and such other and further services as may be desired or required by the applicant, the commission finds that the exercising of the franchise of right of the said applicant to construct and operate telephone facilities in said village is not required and necessary for the public convenience. It is, therefore,

Ordered, That the petition of said The Mercer County Mutual Telephone Company for a certificate that the exercising of its franchise, or right, to construct, maintain and operate certain telephone facilities in the village of Coldwater, Ohio, be, and hereby the same is denied, and that as to all other matters and things therein complained of, the petition and complaint herein be, and hereby the same is dismissed.

No. 2389—In the Matter of the Joint Petition of The Columbus Natural Gas Company, a Corporation Organized and Existing Under the Laws of Ohio, and The Columbus Gas and Fuel Company, a Corporation Organized and Existing Under the Laws of Ohio, to Sell and Purchase Certain Property. Prayer Granted.

This day, after due notice to all parties in interest, this matter came on to be heard and was heard upon the joint application of The Columbus Natural Gas Company and The Columbus Gas and Fuel Company, (corporations duly organized and existing under and by virtue of the laws of the state of Ohio), asking the consent to and approval, by this commission, of the sale, by said first named applicant, and the purchase, by the latter, of all the equipment, meters, supplying pipes and apparatus, except a certain ten-inch line which is not included, located in what was Shepard, now a part of the city of Columbus, Ohio, used to furnish natural gas service to some one hundred and fifty-five consumers.

The commission, being fully advised in the premises, finds:

That, for purchase and sale purposes, the value of said property situated in said City of Columbus, Ohio, herein proposed to be sold and purchased is not less than the sum of \$4,000.00, and

That the public will, upon such sale and purchase of said public utility property, be furnished adequate service for a reasonable and just rate, rental, toll or charge therefore,

and is satisfied that consent and authority for said proposed sale and purchase of such public utility property should be granted. It is, therefore,

Ordered, That said The Columbus Natural Gas Company be, and hereby it is authorized to sell and convey to The Columbus Gas and Fuel Company all of its equipment, meters, supplying pipes and apparatus, except a certain ten-inch line which is not included, used in the furnishing of natural gas service to some one hundred and fifty-five consumers in that part of the city of Columbus, Ohio, formerly the village of Shepard; and said The Columbus Gas and Fuel Company hereby is authorized to purchase said property and to pay therefor the agreed consideration of four thousand dollars. It is further

Ordered, That, forthwith upon the exercise of the authority herein granted, said parties file with this commission schedules providing for their respective withdrawal from and inauguration of

service within the territory now served by means of said property. It is further

Ordered, That nothing herein shall be construed to be a consent to or approval by this commission of any increase in rates or diminution of service within the territory now served by means of said property, nor shall the findings hereinbefore set forth as to the value of said property, rates and service, or the acquiescence in the passing of said agreed consideration be binding upon this commission in any future proceeding involving rates and/or service.

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No. 2550—In the Matter of the Sale of the Entire Assets of The Fort Loramie Light and Power Company and the Purchase of the Same by The Fort Loramie Lighting and Power Company. Prayer Granted.

This day, it appearing to the commission from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, this matter came on for consideration upon the joint application of The Fort Loramie Light and Power Company and The Fort Loramie Lighting and Power Company, (corporations duly organized and existing under and by virtue of the laws of the state of Ohio), asking the consent and authority of this commission for the sale, by said first named applicant, and the purchase by the latter of all the property, rights and other assets of said The Fort Loramie Light and Power Company.

The commission, being fully advised in the premises, finds from the pleadings and exhibits filed herein and its independent inquiry and investigation thereupon:

That, for purchase and sale purposes, the value of all the property rights and other assets of said The Fort Loramie Light and Power Company is the sum of \$38,000.00, and

That the public will, upon the consummation of said proposed sale and purchase of said property, be furnished adequate service for a reasonable and just rate, rental, toll or charge therefor,

and is satisfied that consent and authority for the sale and purchase of said public utility property should be granted. It is, therefore,

Ordered, That said The Fort Loramie Light and Power Company be, and hereby it is authorized to sell to The Fort Loramie Lighting and Power Company all of its property, rights and other

assets, consisting, generally, of a system for the distribution of electrical energy for public and private consumption in and about the villages of Fort Loramie, Osgood and Yorkshire and the hamlet of Willow Dell, Ohio; and said The Fort Loramie Lighting and Power Company hereby is authorized to purchase said property, rights and other assets and to pay therefor the agreed consideration of \$38,000.00, as provided by the order this day made and entered in proceeding No. 2351. It is further

Ordered, That, forthwith upon the exercise of the authority herein granted, said parties file with this commission schedules providing for their respective withdrawal from and inauguration of service within the territory now served by means of said property. It is further

Ordered, That nothing herein shall be construed to be a consent to or approval by this commission of any increase in rates or diminution of service within the territory now served by means of said property, nor shall the findings hereinbefore set forth as to the value of said property, rates and service or the acquiescence in the passing of said agreed consideration be binding upon this commission in any future proceeding involving rates and/or service.

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No. 2563—In the Matter of the Application of The Toledo Edison Company and The Wildwood Service Company for the Sale and Purchase of Property. Prayer Granted.

This day, it appearing to the commission from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, this matter came on for consideration upon the joint application of The Wildwood Service Company and The Toledo Edison Company, (corporations duly organized and existing under and by virtue of the laws of the state of Ohio), asking the consent to and approval, by this commission, of the sale by said first named applicant and the purchase by the latter of gas mains, distributing system and appurtenances used by said The Wildwood Service Company in the distribution and sale of artificial gas to consumers in Adams township, Lucas county, Ohio.

The commission, being fully advised in the premises, finds

from the pleadings and exhibits filed herein and its independent inquiry and investigation thereupon:

That, for purchase and sale purposes, the value of said property is the sum of \$1,000.00, and

That the public will, upon such sale and purchase of said property, be furnished adequate service for a reasonable and just rate, rental, toll or charge therefor,

and is satisfied that consent and authority for such sale and purchase of said public utility property should be granted. It is, therefore,

Ordered, That said The Wildwood Service Company be, and hereby it is authorized to sell the property, rights and other assets composing its artificial gas distribution system in Adams township, Lucas county, Ohio, as more particularly described and enumerated in the application herein, which, insofar as it enumerates and describes said property, hereby is made a part of this order by reference; and said The Toledo Edison Company hereby is authorized to purchase said property and to pay therefor the agreed consideration of one thousand dollars (\$1,000.00). It is further

Ordered, That, forthwith upon the exercise of the authority herein granted, said parties file with this commission schedules providing for their respective withdrawal from and inauguration of service within the territory now served by means of said property. It is further

Ordered, That nothing herein shall be construed to be a consent to or approval by this commission of any increase in rates or diminution of service within the territory now served by means of said property, nor shall the findings hereinbefore set forth as to the value of said property, rates and service, or the acquiescence in the passing of said agreed consideration be binding upon this commission in any future proceeding involving rates and or/ service.

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No. 2515—In the Matter of the Application of The Columbus, Urbana and Western Electric Railway Company. Prayer Denied.

This day, after full hearing, due notice of the time and place of which was given to all parties in interest, this matter came on for final consideration upon the application of The Columbus, Urbana and Western Electric Railway Company for a rescission and vacation of an order, made and entered as of date November 28,

1903), by the commissioner of railroads and telegraphs of the state of Ohio, directing and requiring the predecessor of the applicant to erect, maintain and operate a derailing device in its tracks approaching its crossing, at common grade, with the tracks of The Cleveland, Cincinnati, Chicago and St. Louis Railway Company and The Baltimore and Ohio Railroad Company in Dublin road, approximately one-fourth of a mile from the corporate limits of the city of Columbus, in Franklin county, Ohio, the record made at said hearing and the argument of counsel.

The commission, being fully advised in the premises, finds that said application should be denied. It is therefore,

Ordered, That the application of said The Columbus, Urbana and Western Electric Railway Company for a rescission and vacation of the said order, so made and entered by the commissioner of railroads and telegraphs of the state of Ohio upon the 28th day of November, 1903, be, and hereby the same is denied.

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No. 2575—In the Matter of the Sale, by Z. F. McElheney and Son, and the Purchase by Eleo Voishich, of Motor Bus Line Property. Prayer Granted.

This day, it appearing to the commission from the verified allegations in said applications and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, this matter came on for consideration upon the respective applications of Z. L. McElheney and Son, a partnership operating a motor bus line carrying passengers between the city of Sharon, Pennsylvania and the city of Warren, Ohio, for authority to sell, and of Eleo Voishich, similarly engaged as a public utility, for authority to purchase the motor bus, composing all of the assets of the said first named applicant.

The commission, being fully advised in the premises, finds from the pleadings and exhibits filed herein and its independent inquiry and investigation thereupon:

That the public will, upon the consummation of said proposed sale and purchase of such public utility property, be furnished adequate service for a reasonable and just rate, rental, toll or charge therefor.

and is satisfied that consent and authority for said proposed sale

and purchase of such public utility property should be granted. It is, therefore,

Ordered, That the said Z. F. McElheney and Son be, and hereby they are authorized to sell to Eleo Voishich the motor bus composing all of the assets and property of the motor bus line now operated by them between the city of Sharon, Pennsylvania and the city of Warren, Ohio; and the said Eleo Voishich hereby is authorized to purchase the same in consideration of his release of the said Z. E. McElheney and Son from their obligations for an on account of the unpaid deferred installments of the consideration they had agreed to pay therefor. It is further

Ordered, That, forthwith upon the exercise of the authority herein granted, said parties file with this commission schedules providing for their respective withdrawal from and inauguration of service within the territory now served by means of said property. It is further

Ordered, That nothing herein shall be construed to be a consent to or approval by this commission of any increase in rates or diminution of service within the territory now served by means of said property, nor shall the findings hereinbefore set forth as to rates and service, or the acquiescence in such agreed consideration be binding upon this commission in any future proceeding involving rates and/or service.

✽

No. 2631—In the Matter of the Application of The Morrow Public Service Company for Authority to Issue Capital Stock. Prayer Granted.

(Dated September 18, 1922.)

This day, it appearing to the commission from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, this matter came on for consideration upon the application of The Morrow Public Service Company, (a corporation duly organized and existing under and by virtue of the laws of the state of Ohio), asking the consent and authority of this commission to issue and dispose of seven per cent. preferred capital stock of the par value of \$22,000.00 and common capital stock of the par value of \$11,000.00, the proceeds arising from the sale thereof to be used (a) to pay the agreed consideration for the property, rights and other assets of The Cardington Light, Heat and Power

Company, the purchase of which, by the applicant, was duly consented to and authorized by the order this day made and entered in proceeding No. 2630, and (b) to provide a working capital.

The commission, being fully advised in the premises, finds from the pleadings and exhibits filed herein and its independent inquiry and investigation thereupon:

That, for purchase and also sale purposes, the value of the property of The Cardington Light, Heat and Power Company, the purchase and acquisition of which by the applicant was duly consented to and authorized by the order this day made and entered in proceeding No. 2360, is not less than the sum of \$22,000.00;

That for the maintenance of applicant's service, a working capital of some \$2,500.00 is required, and

That the issue of applicant's preferred capital stock of the par value of \$18,000.00 and its common capital stock of the par value of \$9,200.00 is reasonably required, and the money to be procured thereby, necessary for the acquisition of property and the maintenance and improvement of its service,

and is satisfied that consent and authority for the issue and disposition of such capital stock should be granted. It is, therefore,

Ordered, That said The Morrow Public Service Company be, and hereby it is authorized to issue its common capital stock of the par value of nine thousand, two hundred dollars (\$9,200.00) and its seven per cent. preferred capital stock of the par value of eighteen thousand dollars (\$18,000.00), and that said capital stock be sold for the highest price obtainable but not less than the par value of said common capital stock nor less than eighty-five (85) percentum of the par value of said preferred capital stock. It is further

Ordered, That any discount arising from the sale of said preferred capital stock for less than the par value thereof be extinguished pursuant to the rules and regulations heretofore prescribed by this commission. It is further

Ordered, That the proceedings arising from the sale of said capital stock be, by the applicant, devoted to and used for the following purposes, and no other, to wit:

Twenty-two thousand dollars to be paid, as the agreed consideration, for all the property, rights and other assets (excepting cash on hand and accounts receivable) of The Cardington Light, Heat and Power Company, the purchase of which, by the applicant, was duly consented to and approved by the order, this day made and entered in proceeding No. 2630.

Twenty-five hundred dollars to be used as a working capital.

It is further

Ordered, That the applicant make verified report to this commission of the issue and disposition of said capital stock and the expenditure of the proceeds thereof pursuant to the term and conditions of this order. It is further

Ordered, That the finding hereinbefore set forth as to the value of said property to be acquired of said The Cardington Light, Heat and Power Company and the within authorization of the capitalization of the agreed consideration to be passed therefor, shall not be binding upon this commission in any future proceeding involving rates and/or service. It is further

Ordered, That said application, insofar as the same seeks consent and authority to issue such common capital stock of the additional par value of one thousand, eight hundred dollars and such preferred capital stock of the additional par value of four thousand dollars, be, and hereby the same is denied.

✽

No. 2630—In the Matter of the Joint Petition of The Cardington Light, Heat and Power Company and The Morrow Public Service Company to Sell and Buy Property. Prayer Granted.

(Dated September 18, 1922.)

This day, it appearing to the commission from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, this matter came on for consideration upon the joint application of The Cardington Light, Heat and Power Company and The Morrow Public Service Company, (corporations duly organized and existing under and by virtue of the laws of the state of Ohio), asking the consent to and approval, by this commission, of the sale, by said first named applicant and the purchase by the latter of the property and other assets, except cash on hand and accounts receivable, of said The Cardington Light, Heat and Power Company.

The commission, being fully advised in the premises, finds from

the pleadings and exhibits filed herein and its independent inquiry and investigation thereupon:

That, for purchase and sale purposes, the value of the physical property and other assets of The Cardington Light, Heat and Power Company (excepting cash on hand and accounts receivable) is not less than the sum of \$22,000.00, and

That the public will, upon such sale and purchase of said public utility property, be furnished adequate service for a reasonable and just rate, rental, toll or charge therefor,

and is satisfied that consent and authority for said sale and purchase of such property should be granted. It is, therefore,

Ordered, That said The Cardington Light, Heat and Power Company be, and hereby it is authorized to sell all of its property, rights and other assets, excepting cash on hand and accounts receivable, to said The Morrow Public Service Company; and The Morrow Public Service Company hereby is authorized to purchase and acquire said property, and to pay therefor the agreed consideration of twenty-two thousand dollars. It is further

Ordered, That, forthwith upon the exercise of the authority herein granted, said parties file with this commission schedules providing for their respective withdrawal from and inauguration of service within the territory now served by means of said property. It is further

Ordered, That nothing herein shall be construed to be a consent to or approval by this commission of any increase in rates or diminution of service within the territory now served by means of said property, nor shall the findings hereinbefore set forth as to rates, service and the value of said property, nor the within acquiescence in the passing of said agreed consideration be binding upon this commission in any future proceeding involving rates and/or service.

✽

No. 2619—In the Matter of the Application of The Tawa Light and Power Company to Issue Bonds. Prayer Granted.

(Dated September 18, 1922.)

This day, it appearing to the commission from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, this matter came on for consideration upon the applica-

tion of The Tawa Light and Power Company, (a corporation duly organized and existing under and by virtue of the laws of the state of Ohio), as supplemented and amended, asking the consent and authority of this commission to issue and dispose of five year, eight per cent. bonds of the principal sum of \$10,000.00, the proceeds arising from the sale thereof to be used to pay and discharge certain obligations of the applicant, heretofore incurred in connection with the acquisition of its property and the construction and equipment of its electrical distribution system.

The commission, being fully advised in the premises, finds from the pleadings and exhibits filed herein and its independent inquiry and investigation thereupon:

That, heretofore, by order made and entered as of date June 21, 1922, the applicant herein was duly authorized to issue and sell, at par, common capital stock of the par value of \$25,000.00, the proceeds arising from the sale thereof to be applied toward the payment of the cost of constructing and equipping applicant's projected electrical distribution system, of which said authorized capital stock, capital stock of the par value of \$19,500.00 has been actually issued and sold and the proceeds applied to such purpose;

That the applicant, as of August 3, 1922, has actually invested in capitalizable property, the sum of \$29,498.41, and, after applying thereto the proceeds of said issued and disposed of capital stock, viz.: \$19,500.00, is indebted for and on said account in the approximate sum of \$10,000.00, and

That, if and as the authority heretofore granted for the issue and disposition of applicant's common capital stock of the par value of \$5,500.00 be rescinded, the issue of applicant's bonds of the principal sum of \$10,000.00 is reasonably required and the money to be procured thereby, necessary for the payment and discharge of its lawful, capital obligations.

and is satisfied that, if and as the order, made and entered as of date June 21, 1922, in proceeding No. 2517 be amended by the rescision of the authority, therein granted, for the issue and disposition of applicant's common capital stock of the par value of \$5,500.00 in excess of common capital stock of the par value of \$19,500.00, consent and authority should be granted for the issue and disposition of bonds of the principal sum of \$10,000.00. It is, therefore,

Ordered, That the order, made and entered as of date June 21st, 1922, in the proceeding entitled and numbered, "In the matter of the application of The Tawa Light and Power Company to sell its stock," No. 2517, be, and hereby the same is modified and amended to consent to and authorize the issue and disposition

by said The Tawa Light and Power Company of common capital stock of the total par value of nineteen thousand, five hundred dollars (\$19,500.00) instead and in lieu of common capital stock of the par value of twenty-five thousand dollars (\$25,000.00). It is further

Ordered, That said The Tawa Light and Power Company be, and hereby it is authorized to issue its first mortgage, five year, eight per cent. bonds of the principal sum of ten thousand dollars (\$10,000.00), and that said bonds be sold for the highest price obtainable, but not less than the principal sum thereof. It is further

Ordered, That the proceeds arising from the sale of said bonds be, by the applicant, devoted to and used for the payment and discharge of its obligations, of the approximate sum of \$10,000.00, as of August 3rd, 1922, incurred for and on account of the construction and equipment of its electrical distribution system, and used for no other purpose whatsoever. It is further

Ordered, That the applicant make verified report to this commission of the issue and disposition of said bonds and, in full detail, the expenditure of the proceeds thereof, pursuant to the terms and conditions of this order.

✽

No. 2650—In the Matter of the Application of The Ohio State Power Company for Consent and Authority to Issue and Sell \$69,000.00 Par Value of Its First Mortgage, Twenty Year, Six Per Cent. Gold Bonds, Dated June 1, 1915. Prayer Granted.

(Dated September 14, 1922.)

This day, it appearing to the commission from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, with other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, this matter came on for consideration upon the application of The Ohio State Power Company, (a corporation duly organized and existing under and by virtue of the laws of the state of Ohio), asking the consent and authority of this commission to issue its first mortgage, twenty year, six per cent. gold bonds, dated June 1st, 1915, of the principal sum of \$69,000.00, the proceeds arising from the sale thereof to be applied toward the reimbursement of its treasury for uncanceled, capital expenditures therefrom to the first day of August, 1922.

The commission, being fully advised in the premises, finds from

the pleadings and exhibits filed herein and its independent inquiry and investigation thereupon:

That, within the five years next preceding the date of the filing of the application herein and to and including the thirty-first day of July, 1922, the applicant actually expended from its treasury for the construction of additions, extensions and improvements to its facilities, (not heretofore capitalized or authorized to be capitalized by order of this commission), the sum of \$134,776.62, none of which was procured or obtained by the issue of stock, bonds, notes or other evidences of indebtedness, and

That the issue of applicant's first mortgage bonds of the principal sum of \$69,000.00 is reasonably required and the money to be procured thereby, necessary for the partial reimbursement of applicant's treasury for the aforesaid uncapitalized, capital expenditures therefrom,

and is satisfied that consent and authority for the issue and disposition of said bonds should be granted. It is, therefore,

Ordered, That said The Ohio State Power Company be, and hereby it is authorized to issue its first mortgage, twenty year, six per cent. gold bonds, dated June 1st, 1915, of the principal sum of sixty-nine thousand dollars (\$69,000.00), and that said bonds be sold for the highest price obtainable but not less than ninety percentum of the principal sum thereof. It is further

Ordered, That any discount arising from a sale of said bonds for less than the principal sum thereof be amortized pursuant to the rules and regulations heretofore prescribed by this commission. It is further

Ordered, That the proceeds arising from the sale of said bonds be, by the applicant, devoted to and applied toward the reimbursement of its treasury for the sum of \$134,776.62, none of which was procured by the issue of stock, bonds, notes or other evidences of indebtedness, actually expended therefrom, within the five years next preceding the date of the filing of the application herein and to and including the thirty-first day of July, 1922, for the provision of additions, extensions and improvements to its facilities, not heretofore capitalized or authorized to be capitalized by order of this commission, and used for no other purpose whatsoever. It is further

Ordered, That the applicant make verified report to this commission of the issue and disposition of said bonds and the expenditure of the proceeds thereof pursuant to the terms and conditions of this order.

No. 2628—In the Matter of the Application of The Stillwater Telephone and Telegraph Company, of Covington, Ohio, for Consent and Authority to Issue Preferred Capital Stock. Prayer Granted.

(Dated September 11, 1922.)

This day, it appearing to the commission from the verified allegations in said application and the sworn statements and exhibits filed in connection therewith, and other documentary evidence submitted, that the taking of oral testimony herein is unnecessary, this matter came on for consideration upon the application of The Stillwater Telephone and Telegraph Company, a corporation duly organized and existing under and by virtue of the laws of the state of Ohio, asking the consent and authority of this commission to issue and dispose of its six per cent. preferred capital stock of the par value of 5,187.95, the proceeds arising from the sale thereof to be used:

To reimburse its treasury for uncaptalized, capital expenditure therefrom to July 1st, 1922.....	\$2,055.41
To pay for certain additions, extensions and improvements to its facilities, the cost of which has been estimated at the sum of.....	\$3,132.54

The commission, being fully advised in the premises, finds from the pleadings and exhibits filed herein and its independent inquiry and investigation thereupon:

That, within the five years next preceding the date of the filing of the application herein and to the first day of July, 1922, the applicant actually expended from its treasury for the construction of additions, extensions and improvements to its facilities, not heretofore capitalized or authorized to be capitalized by order of this commission, the sum of \$2,055.41, none of which was obtained or procured by the issue of stock, bonds, notes or other evidences of indebtedness;

That the applicant has in contemplation or under contract the provision of certain additions, extensions and improvements to its facilities, the cost of which has been estimated at the sum of \$3,132.54, and

That the issue of applicant's preferred capital stock of the par value of \$5,187.95 is reasonably required, and the money to be procured thereby necessary for the reimbursement of its treasury for uncaptalized, capital expenditure therefrom, and for the construction, completion, extension and improvement of its facilities, as aforesaid,

and is satisfied that consent and authority for the issue and dis-

position of said preferred capital stock should be granted. It is, therefore,

Ordered, That said The Stillwater Telephone and Telegraph Company be, and hereby it is authorized to issue its six per cent. preferred capital stock of the par value of five thousand, one hundred and eighty-seven and 95/100 dollars (\$5,187.95), and that said capital stock be sold for the highest price obtainable, but not less than the par value thereof. It is further

Ordered, That the proceeds arising from the sale of said preferred capital stock be, by the applicant, devoted to and used for the following purposes, and no others, to wit:

The reimbursement of its treasury for the sum of \$2,055.41, not procured by the issue of stock, bonds, notes or other evidences of indebtedness, actually expended therefrom, within the five years next preceding the date of the filing of the application herein and to the first day of July, 1922, for the construction of additions, extensions and improvements to its facilities, not heretofore capitalized or authorized to be capitalized by order of this commission, \$2,055.41.

The payment of the cost of the additions, extensions and improvements to its facilities, more fully described in "Exhibit B" appended to the application herein, which hereby is made a part of this order by reference, estimated at the sum of \$3,132.54.

It is further

Ordered, That the applicant make verified report to this commission semi-annually, within fifteen days after the close of each calendar, semi-annual period, of the issue and disposition of said preferred capital stock and, in reasonable detail, the expenditure of the proceeds thereof pursuant to the terms and conditions of this order.

ATTORNEY GENERAL

When the Industrial Commission of Ohio Has Awarded and Paid To an Injured Workman Compensation on Account of Such Injury, it is Not Warranted in Reimbursing the Employer for Money Paid by it to Said Injured Employee.

No. 3610.—(Opinion Dated September 19, 1922.)

Hon. Joseph T. Tracy, Auditor of State, Columbus, Ohio.

Dear Sir,—Your letter of recent date relative to the administration of the Workmen's Compensation Fund, was duly received.

The facts of the specific case referred to in the correspondence, as I understand them, are as follows:

An award of \$65.98 was made to an injured employee. The full amount of the award was paid by the Industrial Commission to the employee, notwithstanding the employee had previously filed with the commission a written assignment or order for \$20.00 of the award in favor of his employer, to cover the amount which the employer had advanced to the employee.

The question which you have raised, based upon the foregoing facts, is whether or not the commission would be warranted in allowing the employer a credit of \$20.00 on its premium by reason of the commission having failed to honor the assignment above mentioned?

Examination of the Workmen's Compensation Act fails to disclose any authority conferred upon the commission to allow the credit in question. Specific provision has been made by the act for the classification of occupations and industries, for the fixing of premium rates, and for the adoption of rules for the collection and disbursement of the compensation fund (see Section 1465-53 et seq., G. C.), and the act, considered in its entirety, contains no provision which would justify the commission in allowing a credit to the employer in question on his premium account.

The entire amount of the award having been paid by the commission, it would seem that the doctrine of 1921 Opinions of the Attorney General, Vol. 1, page 444, would apply. The syllabus to that opinion reads:

"When the Industrial Commission of Ohio has awarded and paid to an injured workman compensation on account of such injury, it is not warranted in reimbursing the employer for money paid by it to said injured employee."

The Resolution Prescribed by Section 6917, General Code, in Reference to Roads, Need Receive Only a Majority Vote of the Board of County Commissioners Where Action on the Preliminary Resolution Has Been by Unanimous Vote.—A Majority Vote is Also Sufficient in the Matter of Hearing and Confirming Assessments for Such Improvement and Also as to Levying Taxes Under Section 6926, et seq., General Code, and the Issuing of Bonds Under Section 6929, General Code.

No. 3609.—(Opinion Dated September 19, 1922.)

Hon. Lawrence H. Webber, Prosecuting Attorney, Elyria, Ohio.

Dear Sir,—You have recently written to this department as follows:

“A peculiar situation has arisen in this county and I would greatly appreciate having your opinion concerning the same. The situation is this: One of our county commissioners is ill and in bed, suffering from nervous breakdown. In all human probability he will not be out before two months. During that time important legislation, particularly with reference to the construction of roads, will be passed by the county commissioners. In several cases the commissioners have proceeded under authority of Section 6910 of the General Code, which provides for a unanimous vote, and in this connection permit me to call your attention to Section 6921, which provides for a unanimous vote.

“The question is: Is it necessary in all of the steps of the legislation to have a unanimous vote on all resolutions, if the commissioners are proceeding under Section 6910 and 6921 of the General Code. The problem that confronts the commissioners just at this particular time, and the resolution which they are now ready to pass is the one referred to in Section 6917 of the General Code.”

Your question arises in connection with statutes relating to road improvement by county commissioners as authorized generally by the group of Sections, 6906 to 6954, G. C.

Proceedings for an improvement under those sections may be initiated in either of two ways: Upon petition by fifty-one per cent. of land owners (Sections 6907 to 6909) or by unanimous vote of the county commissioners, as provided by Section 6910. The latter section reads as follows:

“The county commissioners may, without the presentation of a petition, take the necessary steps to construct, reconstruct, improve or repair a public road or part thereof, as hereinbefore provided, upon the passage of a resolution by unanimous vote

declaring the necessity therefor. The cost and expense thereof may be paid in any one of the methods provided in Section 6919 of the General Code, as may be determined by the county commissioners in said resolution."

Similarly, Section 6911 specifically provides that where the board is acting without a petition, their resolution describing the route and termini of the road, the kind and extent of the improvement, and the order for survey, etc., shall be by unanimous vote. You indicate that action has already been taken under Section 6910, but it is presumed that such action also embraces the matters mentioned in Section 6911, so far as the resolution of the county commissioners is concerned.

You also make mention of Section 6921. That section reads as follows:

"The county commissioners, or joint board thereof, upon a unanimous vote, may without a petition therefor, order that all the compensation and damages, costs and expenses of constructing any improvement be paid out of the proceeds of any levy or levies for road purposes on the grand duplicate of the county, or out of any road improvement fund available therefor, or the county commissioners or joint board thereof may enter into an agreement with the trustees of the township or townships in which said improvement is in whole or part situated, whereby said county and township, or one or more of them may pay such proportion or amount of the damages, costs and expenses as may be agreed upon between them."

In connection with Section 6921 it is to be noted that Section 6919, G. C., which lays down a number of methods for apportioning the cost of the improvement, concludes with this sentence:

"When the board of county commissioners acts by unanimous vote and without the filing of a petition, the commissioners shall set forth in their resolution declaring the necessity for the improvement, the method of apportioning and paying for compensation, damages, costs and expenses of the improvement, which may be any one of the methods above provided."

It is to be presumed, then, that such resolutions of the county commissioners as have been passed by unanimous vote under Sections 6910 and 6911, set out, as prescribed by Section 6910, the proportion of cost that is to be assumed by the various parties in interest—county, township and property owners; in other words, that

the options allowed by Sections 6919 and 6921 have already been selected through unanimous vote in the preliminary resolution prescribed by Sections 6910 and 6911.

Starting with this assumption, we are brought to your specific question of whether, when the commissioners are proceeding without a petition, they may pass the resolution prescribed by Section 6917 only by unanimous vote. Said section reads as follows:

"If after hearing and determining all claims for compensation and damages on account of land or property taken for said improvement, or after the determination of such claims in the probate court on appeal, said board of commissioners is still satisfied that the public convenience and welfare require that such improvement be made, and that the cost and expense thereof will not be excessive in view of the public utility thereof, said commissioners shall order by resolution that they proceed with such improvement, and shall adopt the surveys, plans, profiles, cross-sections, estimates and specifications therefor, as reported by the surveyor, or with such modifications thereof as the commissioners and surveyor may agree upon."

This section requires the passage of a second resolution, after the completion of the steps contemplated by the preliminary resolution prescribed by Sections 6910 and 6911, that is, the completion of the survey, making of estimates, etc., and the further steps contemplated by Sections 6912 to 6916, i. e., the giving of notice to file claims for damages, carrying out of appropriation proceedings and hearing of damage claims. But section 6917 does not in terms require unanimous action, nor is it believed that such requirement appears by implication. The purpose of unanimous action, as compared with majority action, would seem to be fully subserved by unanimous action on the preliminary resolution called for by Sections 6910 and 6911; for the preliminary resolution, as to which unanimous action is required, embraces the principal element which is to be set forth in a petition when a petition is filed, that is to say, the method of paying compensation, damages, costs and expenses of the improvement. (See Section 6907.) Furthermore, the preliminary resolution has already determined the necessity of the improvement, leaving the only question to be resolved in the second resolution mentioned in Section 6917 as one of whether the cost of the proposed improvement will be excessive in view of the public utility.

For these reasons, then, it is the conclusion of this department that the resolution prescribed by Section 6917 need receive only a

majority vote where action on the preliminary resolution has been by unanimous vote.

What has been said disposes of the major part of your inquiry, though you ask generally whether all steps must be had by unanimous vote. A remaining important step, after action has been taken under Section 6917, is the making of assessments as provided by Sections 6922, et seq. Without discussing those sections at length, it need only be said that they provide for a hearing on the assessment by the commissioners after notice, and for confirmation by the commissioners before the assessment is entered on the duplicate. There is no specific requirement of unanimous action. The assessment proceedings are the same in character, whether the improvement project has been initiated by petition or by unanimous vote of the commissioners. For this reason, it is the view of this department that only majority action is required in the matter of hearing and confirming the assessment.

Similarly, it is the view of this department that without reference to the manner in which the project is initiated, majority action only is required in the manner of levying taxes (Sections 6926, et seq.) and issuing bonds (Section 6929).

SECRETARY OF STATE

NEW INCORPORATIONS

The Martins Ferry Savings & Loan Co., Martins Ferry, \$1,000,000. O. F. Ozley, J. H. Morford, Milo J. Zimmerman, George Heinicke, O. F. Bruce.

The Reliance Heating Co., Cleveland, \$10,000. Jacob Helmke, Homer W. Badgett, Floyd E. Shannon, Charles Reis, Charles D. Trout.

The Sherwood Construction Co., Cleveland, \$5,000. B. Kadison, M. Pulin, Gertrude Marks, Ben G. Ruby, H. McIntyre, Jr.

The Toledo Knit Goods Co., Toledo, \$500. LeRoy E. Eastman, George P. Smith, Helene I. Boughton, Carrie E. Kamke, Stella M. Hughes.

The Springfield Saddle Club Co., Springfield, \$500. Edward J. Coleman, Norman H. Marshall, Hugh J. Carter, Edwin R. Cook, H. E. Vogle.

The Superior Die Tool & Machine Co., Columbus, \$28,287.36. Charles A. Field, Stewart A. Hoover, Grace M. Armbruster, D. C. Throckmorton, H. B. Tingley.

The Equity Bond & Mortgage Co., Toledo, \$500. D. C. Hemley, T. W. Christian, Herman R. Miller, U. G. Denman, Clarence J. Applegate.

The Mulzer Motor Sales Co., Grove City, \$500. Leslie Mulzer, Otto Wilfert, Paul H. V. Trier, C. L. Dierker, H. M. Bender.

The W. H. Upp Motor Co., Toledo, \$30,000. Willis H. Upp, Bradford Mills, Thos. A. DeVilbiss, Geo. B. Orwig, Ella L. Tavanner.

The Miracle Incubator Co., Fostoria, \$10,000. William C. Huber, Mary J. Huber, Charles Ott, James W. Miller, Edith A. Miller.

The C. D. Shafer Co., Athens, \$10,000. A. B. Wells, M. D. Hughes, R. W. Finsterwald, Harvey C. Baker, Orlan G. Houck.

The Harford Optical Co., Toledo, \$25,000. Charles S. Hartford, L. W. Storey, Anna Bayley, James Nye, Frank E. Calkins.

The Newton Falls Co., Newton Falls, \$25,000. W. G. Bate, Wm. Fulling, L. D. Boylan, A. G. Ewing, L. B. Griffith.

The Superior Lumber and Mill Work Co., Deer Park, \$25,000. Edwin

H. Eyrich, George F. Eyrich, Sr., Charles F. Lamps, Adele Krollman, Geo. F. Eyrich, Jr.

The Union Savings & Loan Association, Dover, \$1,000,000. H. R. Hill, M. E. Evans, James V. Suhr, W. P. B. Wachtel, H. B. Mallette (Tuscarawas Co.)

The Wilcox-Anderson Co., Cleveland, \$100,000. John M. Garfield, King Tolles, William A. Dougherty, Henry A. Marting, Joseph B. Marsh, Robert M. Boyd.

The Union Loan & Savings Co., Martins Ferry, \$1,000,000. Charles E. Otte, Victor J. Kehrner, Robert Desch, C. D. McHenry, B. F. Mackey.

The Pardee-Chambers Co., Akron, \$15,000. G. W. Auten, E. C. Chambers, R. L. Pardee, M. D. Chambers, M. A. Pardee.

The Jerome Realty Co., Toledo, \$25,000. I. Silverman, Zelma Harding, Oscar J. Smith, H. L. Christopher, S. L. Basch.

The Gaylord Realty Co., Cleveland, \$5,000. David L. Schiff, B. Kadison, Barnett Sherr, I. Furdaus, Samuel Landau.

The Acme Bond and Mortgage Co., Beechwood, \$500. R. E. Heimberger, E. Kopp, C. L. Sheil, G. P. Gordon, L. Kachel.

The Ferrier Publishing Co., Cleveland, \$500. J. Ferrier, B. Byron, Reed Rowley, L. W. Wickham, C. L. Sheil.

The Dow Coal Co., Nelsonville, \$10,000. D. H. Armstrong, D. F. Shafer, A. H. Schory, E. R. Davis, O. P. Amann.

The Dayton Brick Co., Dayton, \$200,000. Lincoln J. Davis, John M. Mulford, Earl R. Sycke, Edw. E. Burkhardt, Nelle A. Sweeney.

The Suburban Hardware Co., Cincinnati, \$25,000. John Nohstall, Frank Eichenlaub, Walter S. Siemerling, Eril Beinecke, George Schuttrumpf.

The Hopper-Stier Constr. Co., Cincinnati, \$10,000. Carl Stier, Willis E. Hopper, Oscar Flaig, Jr., Augusta Stier, Marie Hopper.

The Preslau Co., Cleveland, \$10,000. Geo. A. Tamier, C. E. Preslau, E. Zalad, M. M. Gleason, L. S. Sobel.

The Peerless Plating Co., Toledo, \$6,000. H. A. Middleton, Edwin Williams, Edwin R. Thurston, Walter A. Eversman, Charles W. Racine.

The Adam Loos Boiler Works Co., Toledo, \$10,000. Adam Loos, Adam J. Loos, George Loos, Herman W. Loos, Elsie K. Loos.

The Richards Clothes Co., Cleveland, \$12,000. Michael Sheinkman, William Sheinkman, Harry Sheinkman, Mollie Friedman, Wallace O. Anderson.

The City Shoe Co., Cleveland, \$10,000. Michael Sheinkman, William Sheinkman, Harry Sheinkman, Mollie Friedman, Wallace O. Anderson.

The Economy Garment Co., Toledo, \$20,000. Ralph Studevan, Fred Stewart, Max Taub, D. H. Klapper, Charles H. Loper.

The Cleveland Clevenger Co., Cleveland, \$50,000. Robert H. Saylor, William W. Dawson, Joe B. Kiefer, W. K. Stanley, M. Mergner.

The R. A. Rasche Co., Cincinnati, \$50,000. Rudolph A. Rasche, Joseph M. Wessendarp, Marcus Rasche, Arthur M. Wessendarp, Otto Rasche.

The Hygienic Mfg. Co., Cleveland, \$1,000. S. H. Miller, Max S. Fishel, Lex Kintner, C. J. Benkoski, H. E. Cicik.

The Amsbary Dale Co., Gallipolis, \$15,000. Henry Kerns, G. W. Amsbary, C. M. Dale, J. E. Holliday, Jake Soden.

The Citizens Commercial & Svgs. Bank, Warren, \$50,000. Jno. M. Orr, Ed. Geisman, Geo. T. Hecklinger, Lewis L. Guanieri, W. G. Alexander, A. B. Clark.

The Vapo Stove Building Co., Lima, \$35,000. G. O. Dupuis, J. T. Kaufman, Elmer D. Webb, Glen C. Webb, A. G. Sawyer.

The Noll Delicatessen Co., Dayton, \$10,000. H. Sherman Lane, Reuben F. Hheis, R. G. Corwin, Abraham K. Meck, S. S. Markham.

The Falla-Dambach Co., Canton, \$25,000. Frederick L. Dambach, Henry Falls, D. B. Day, Carl R. Loesch, M. L. McCann.

The Morrow Branch Stores Co., Springfield, \$25,000. John Morrow, L. A. Morrow, G. J. Morrow, John L. Zimmermann, Jr., Charles B. Zimmermann.

The Adams Livestock Co., W. Union, \$3,000. H. S. White, W. S. Mahaffey, J. S. Cosby, E. C. Fenton, D. C. Beighley.

The Eaton Buick Co., Eaton, \$15,000. E. J. White, Wm. M. Watts, Van White, Cora S. White, McClellan White.

The Portage Rendering Co., Akron, \$25,000. George J. Bickley, L. R. Barnes, L. J. Ferbstein, L. S. Brocker, Robert P. Pool.

The B. B. Oil and Gas Co., Marietta, \$100,000. George I. Bunnell, Phil Brown, Edward B. Follett, Brady Snyder, James Smith.

The Saybrook Light, Power and Water Co., Ashtabula, \$10,000. J. P. Dodge, L. Heath, E. D. Richards, Max E. Fros, C. R. Busse.

The Singer Mfg. Co., Cleveland, \$500. Wm. Agnew, B. M. Singer, L. I. Benowitz, R. C. Dorward, Geo. S. Myers.

The Chamber of Commerce Holding Co., Springfield, \$1,500. Homer C. Corry, Oliver H. Anderson, Edward Harford, Edward A. Tehan, Harlen C. West.

The Realty Service Co., Cleveland, \$10,000. Wm. W. Rosenzweig, B. D. Zieve, A. Klima, Ruehm Blum, J. N. Galvin.

The Reinhart, Roberts Auto Sales Co., Toledo, \$10,000. Geo. M. Reinhart, Maude Reinhart, Henry C. Reinhart, Joseph D. Roberts, Isabel Roberts.

The Mount Union Mill and Coal Co., Alliance, \$500. W. H. Cox, J. B. Cox, Jno. L. Nelan, Edward E. Powell, B. G. Sahar.

The Respese Realty Co., Toledo, \$50,000. Frank B. Respess, Fred Custer, John A. Price, Scott Stahl, William Beatty.

The Goodin-Timmons Co., Coshocton, \$10,000. Brooke J. Goodin, William D. Timmons, R. F. Timmons, Elsie C. Hosick, Frances A. Donohew.

The Simons Shoe Co., Cleveland, \$10,000. Frank Leichtman, Margaret Simons, Sallie Zielinski, D. B. MacAusland, Jos. C. Castle.

The Huron Realty Co., Toledo, \$25,000. Edwin Williams, Edwin R. Thurston, Leo E. Guthrie, Charles W. Racine, Henry A. Middleton.

The County Savings & Loan Co., Steubenville, \$500,000. J. Earl Cox, Owen P. Moore, Frances Blumenstein, Gertrude Blackstone, John McIntosh.

The Owners Apartment Co., Cleveland, \$90,000. B. E. Robertson, Irene R. Faist, Jackson B. Morris, I. W. Stillinger, William E. Hanna.

The American Industrial Service Co., Cleveland, \$10,000. Max P. Eckelman, Jno. C. Hawk, Frank S. Krause, Frank A. Simon, Herbert C. Lieberman.

The Mentor Lumber & Supply Co., Mentor, \$25,000. John H. Hogg, C. H. Foote, H. W. Lower, D. L. Toben, John Hillenbrand.

The Green Springs Masonic Home Co., Green Springs, \$15,000. Leslie H. Johnson, Don A. McConnell, Elmer E. Neikirk, Dwight L. Giffin, Ralph S. Gale.

The E. J. Lewis Coal Co., Wells-ville, \$150,000. D. B. Mackintosh, E. J. Kewis, S. D. Foster, G. L. Brokaw, John P. Wilson.

The Biggs-Welliver Co., Hamilton, \$1,000. Alfred J. Welliver, Walter S. Bowers, Marc E. Welliver, Leon J. Ziliox, Edgar Biggs.

The Representative Mfg. & Supply Co., Cleveland, \$50,000. J. Virgil Cory, W. W. Kiefer, H. R. Sup, A. L. Fields, I. R. Morris.

The Arlington Investment Co., Akron, \$5,000. Murray S. Parker, Thresa Neust, Arilla M. Parker, A. C. Littell, Edna Parker.

The C. E. Meredith & Sons Co., Orwell, \$20,000. Paul G. Meredith, H. C. Meredith, C. E. Meredith, Harriette L. Meredith, Hattie I. Meredith.

The Frank Ault Tool and Production Co., Dayton, \$20,000. Frank Ault, Wm. F. Miller, Ira Ault, W. K. Matthews, Charles W. Dale.

The Rempes Motor Service Co., Cleveland, \$500. Geo. H. Rempes, Wm. M. Bresler, W. J. Lynch, G. M. Garling, Wm. Bidlingmyer.

The Walker Piston Co., Cleveland, \$1,000. William Firth, C. N. Herringshaw, E. W. Philpott, W. F. Dillon, A. C. Smith.

The Glascote Co., Euclid, \$500. John C. Barkley, Harry A. Gillis, L. S. Lomasson, I. Henderson, E. D. Hutchinson.

The Broad Street Storage Co., Elvira, \$5,000. Gertrude Kailes, Sam Sadaris, Doris Cheesman, Helen Blauvelt, A. H. West.

The Parkview Stables Co., Cincinnati, \$20,000. Joseph L. Rhinock, Caroline Cox, Ben L. Heidinesfeld, Sig-mund Rheinstrom, E. J. Babbitt.

The Warren State Bank Co., Warren, \$60,000. Lewis L. Guarani-eri, Angelo Scarnecchia, Maurice Orlando, F. S. Van Gorder.

The Trumbull Stamp and Supply Co., Warren, \$10,000. L. C. Veits, A. E. Stevens, N. G. Rossi, M. J. Cassidy, Matilda Rutter.

The W. N. Siebert Co., Columbus, \$10,000. W. N. Siebert, Chas. M. Siebert, Jr., L. A. Siebert, W. B. Mc Leskey, B. G. Watson.

The T Hold Mfg. Co., Cleveland, \$1,000. Wm. Firth, C. N. Herringshaw, E. W. Philpott, W. G. Dillon, A. C. Smith.

The Toledo Laboratories Ass'n. Co., Toledo, \$10,000. Arthur N. Smith, Geo. E. Anthony, Meema K. Smith, J. Bertram Hirsch, Sol D. Tucker.

The Citizens Savings & Loan Co., Toronton, \$700,000. O. F. Ozley, F. Blumenstein, M. J. Zimmerman, Geo. H. Bisson, George Heinicks.

The Keystone Coal & Supply Co., of Warren, \$25,000. L. C. Viets, Edmund E. Gettig, R. H. MacFarland, Myrtle Jeffries, Tom Walsh.

The Smith Oil & Gas Co., Junction City, \$50,000. H. A. Smith, R. G. Smith, T. V. Smith, P. R. Smith, K. O. Smith.

The Shepherd Dog Club of Ohio Co., Cleveland, \$10,000. J. H. Allendorf, A. E. Riester, B. G. Heiser, Bruce Chisholm, Albert L. Brainard.

The Trumbull Chevrolet Co., Youngs-town, \$10,000. Charles Diebel, F. C. Joyce, D. P. Conway, Walter Pritchard, Kathryn A. Kirchner.

The Royalton Realty Co., Cincinnati, \$100,000. Robert A. Casey, James N. Dugan, W. Mack Johnson, H. A. Bayless, Robert F. Kroger.

The Cleveland Optical Co., Cleve-land, \$100,000. Chauncey C. Herron, H. A. Combes, George Chapman, F. M. Newell, Harry L. Braha.

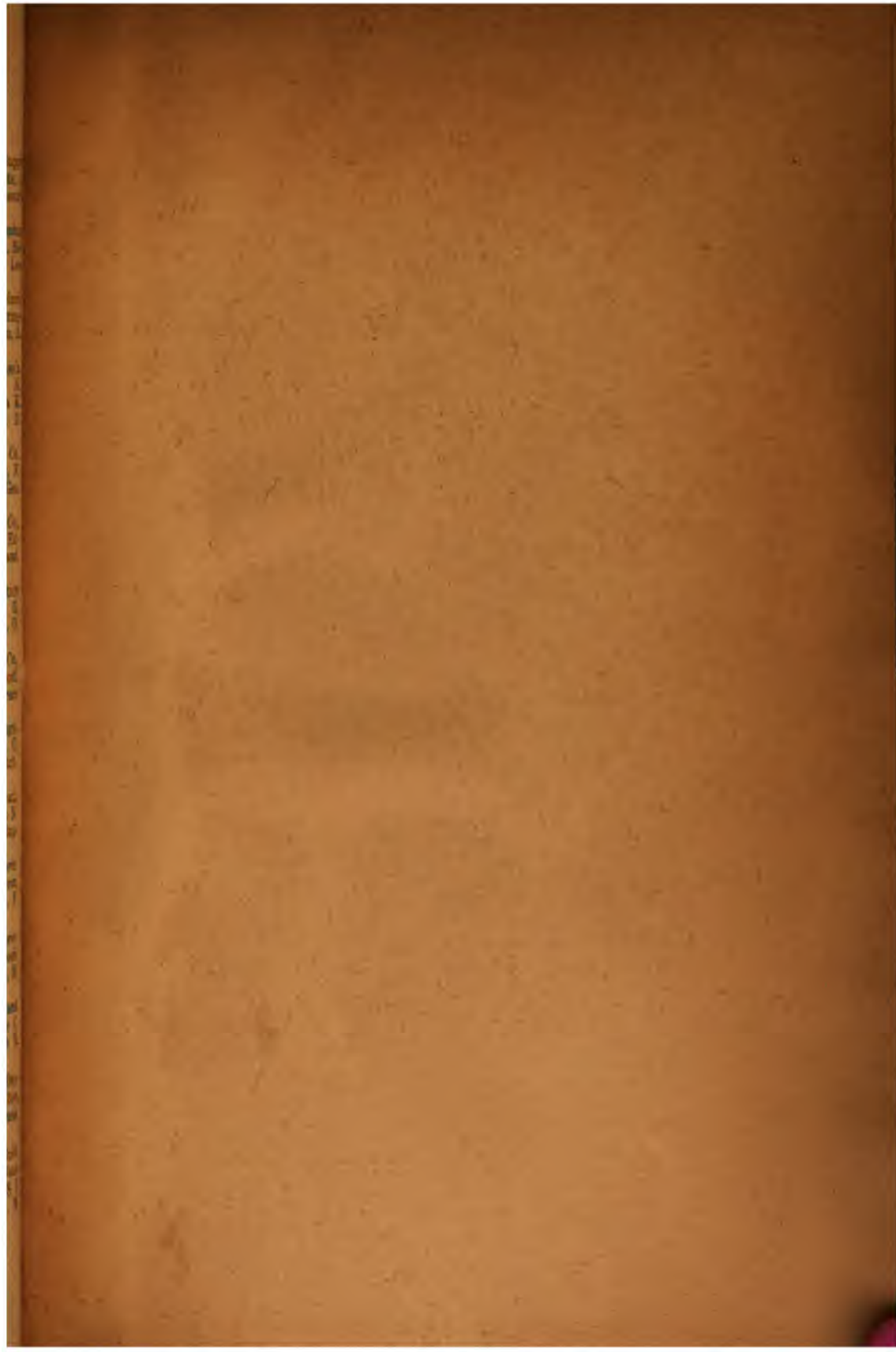
The James H. Murphy Co., Cleve-land, \$500. Jno. A. Hadden, R. Froehlich, M. M. Flint, A. M. McNally, M. A. Anderson.

The R. R. Shrimplin Co., Cleveland, \$50,000. Paul B. Walker, Walter C. Kelsey, Bonnibel Strong, Robert R. Shrimplin, C. E. Clarke.

The Archie L. Hamilton Co., Day-ton, \$25,000. Archie L. Hamilton, Jennie L. Hamilton, Edgar L. Shank, George W. Ozias, E. R. Horn.

The Painesville Odd Fellows Build-ing Co., Painesville, \$40,000. Jacob F. Schibner, C. E. Witzman, S. J. Goldsmith, F. H. Greening, G. W. Smith.

2-24-23





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